

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HONORABLE GEORGE H. KING, UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
PLAINTIFF,)
)
VS.) NO. CR 10-531-GHK
)
JACK GAMBARYAN, ARAM KHACHATRYAN,)
GRIGOR GARIBYAN, HAYK KARAYAN AND)
ZHIRAYR KARAYAN,)
)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

WEDNESDAY, DECEMBER 15, 2010; 9:37 A.M.

HEARING RE MOTION AND EVIDENTIARY HEARING

PAGES 1 THROUGH 96, INCLUSIVE

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LEGEND:

W MR. WALSH

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, DECEMBER 15, 2010

2 9:37 A.M.

3 --OOO--

4 THE CLERK: PLEASE REMAIN SEATED AND COME TO
5 ORDER. THIS UNITED STATES DISTRICT COURT IS IN SESSION.
6 THE HONORABLE GEORGE H. KING, JUDGE PRESIDING.

7 CALLING ITEM NO. 1 ON THE CALENDAR, CRIMINAL
8 10-531, UNITED STATES VERSUS JACK GAMBARYAN,
9 ARAM KHACHATRYAN, HAYK KARAYAN, AND ZHIRAYR KARAYAN.

10 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE
11 RECORD.

12 MR. WOLFE: GOOD MORNING, YOUR HONOR.
13 STEPHEN WOLFE FOR THE UNITED STATES.

14 MR. REED: GOOD MORNING, YOUR HONOR. DAVID REED
15 ON BEHALF OF JACK GAMBARYAN. HE'S PRESENT IN COURT.

16 MR. WALSH: GOOD MORNING, YOUR HONOR.
17 JOSEPH WALSH ON BEHALF OF ZHIRAYR KARAYAN. HE'S PRESENT IN
18 COURT.

19 MS. SAVO: GOOD MORNING, YOUR HONOR. KIM SAVO,
20 DEPUTY FEDERAL PUBLIC DEFENDER, ON BEHALF OF
21 ARAM KHACHATRYAN. HE IS PRESENT ON BOND BEFORE THE COURT.

22 MR. BROOKLIER: GOOD MORNING, YOUR HONOR.
23 ANTHONY BROOKLIER FOR HAYK KARAYAN. HE'S PRESENT AND SEATED
24 TO THE FAR RIGHT CLOSEST TO YOUR HONOR, SEATED BEHIND ME.

25 THE COURT: GOOD MORNING, COUNSEL.

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1 ALL RIGHT. THIS MATTER'S ON THE COURT'S CALENDAR
2 TO CONSIDER THE MOTION FILED BY THE DEFENDANT TO SUPPRESS
3 EVIDENCE. LET ME FIRST MAKE SURE THAT, PROCEDURALLY, WE ARE
4 ON THE SAME PAGE HERE.

5 THIS MOTION WAS BROUGHT BY MR. GAMBARYAN,
6 MR. HAYK KARAYAN AND MR. ZHIRAYR KARAYAN AND JOINED IN BY
7 MR. GARIBYAN AND MR. KHACHATRYAN.

8 IS THAT CORRECT SO FAR, MR. REED?

9 MR. REED: I'M NOT SURE ABOUT THE LAST
10 DEFENDANT --

11 YES. THAT'S CORRECT, YOUR HONOR.

12 THE COURT: OKAY. SO LET ME BEGIN BY TELLING YOU
13 WHERE I STAND AND WHAT I THINK ABOUT THIS.

14 I HAVE SPENT A LOT OF TIME THINKING ABOUT THIS,
15 AND I THINK MOST, IF NOT ALL, OF THE DISPUTED FACTS REALLY
16 ARE IMMATERIAL BECAUSE AS FAR AS I'M CONCERNED, THIS IS
17 WHERE I BELIEVE MY ANALYSIS AT THIS POINT TENTATIVELY LEADS
18 ME -- AND I'M GOING TO GIVE YOU FOLKS AN OPPORTUNITY, OF
19 COURSE, TO COMMENT, BUT THIS IS WHERE I BELIEVE MY TENTATIVE
20 IS.

21 MR. REED: YOUR HONOR, BEFORE BEGINNING, MAY I
22 JUST STATE THAT MR. STANLEY, WHO REPRESENTS ONE OF THE
23 DEFENDANTS IN THE CASE, I THINK IS JUST A LITTLE LATE, AND I
24 WOULD BE HAPPY TO STAND IN FOR HIS CLIENT.

25 THE COURT: WHO DOES HE REPRESENT?

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1 DEFENDANT GARIBYAN: GRIGOR GARIBYAN.

2 THE COURT: LOUDER.

3 DEFENDANT GARIBYAN: GRIGOR GARIBYAN.

4 MR. REED: AND MY UNDERSTANDING IS I THINK HE'S
5 PARKING HIS CAR AND WE WOULD LIKE, OF COURSE, TO GET
6 STARTED. I WOULD BE HAPPY TO STAND IN FOR MR. STANLEY IF
7 THE COURT WOULD GIVE ME PERMISSION TO DO SO.

8 THE COURT: WELL, I DON'T HAVE A PROBLEM WITH THAT
9 AS SUCH, AND I APPRECIATE YOU HELPING TO MOVE THIS ALONG.
10 I'M DISAPPOINTED THAT MR. STANLEY IS NOT HERE BECAUSE
11 MR. GARIBYAN HAS FILED A JOINDER, AND SO WE SHOULD HAVE HIM
12 HERE.

13 AND SO I THINK WHAT WE'LL DO IS WE'LL JUST HAVE TO
14 TAKE A FEW MINUTE RECESS, AND THEN WE'LL SEE WHY MR. STANLEY
15 HAS HAD TO HOLD US UP. AND YOU SAY THAT YOU BELIEVE HE'S
16 SOMEWHERE NEARBY?

17 MR. REED: I UNDERSTAND THAT HE IS.

18 THE COURT: OKAY. I WOULD RATHER NOT GO AHEAD
19 WITH THIS BECAUSE, ALTHOUGH I DON'T THINK THERE WILL BE ANY
20 DETERMINATION OR FACTUAL DISPUTE BECAUSE, IN LIGHT OF WHAT
21 I'M GOING TO SAY, I THINK MUCH OF THE DISPUTED FACTS THAT
22 MAY BE DISPUTED CREATED IN THE DECLARATION IS IMMATERIAL AS
23 FAR AS MY ANALYSIS IS CONCERNED BECAUSE I THINK THIS IS A
24 LEGAL ISSUE.

25 BUT LET'S SEE IF MR. STANLEY COMES HERE WITHIN A

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1 FEW MINUTES, AND THEN WE'LL DO THAT.

2 MR. REED: YES, YOUR HONOR.

3 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE A RECESS
4 UNTIL MR. STANLEY SHOWS UP.

5 MR. BROOKLIER: YOUR HONOR, MAY I ADDRESS THE
6 COURT BRIEFLY?

7 THE COURT: YES.

8 MR. BROOKLIER: THE COURT MAY ALREADY KNOW THIS,
9 BUT I JUST FINISHED A TRIAL WITH JUDGE PERCY ANDERSON ON
10 MONDAY. THE JURY IS DELIBERATING.

11 THE COURT: I UNDERSTAND. I GOT A PHONE CALL FROM
12 JUDGE ANDERSON, AND WHAT WE'LL DO IS IF THERE IS A NOTE,
13 HE'S GOING TO CALL MY STAFF WHO WILL LET ME KNOW, AND THEN
14 I'LL MAKE SOME ACCOMMODATIONS FOR YOU.

15 MR. BROOKLIER: THANK YOU VERY MUCH, YOUR HONOR.
16 I APPRECIATE IT.

17 THE COURT: ALL RIGHT. VERY GOOD.

18 *(RECESS TAKEN FROM 9:41 TO 9:48.)*

19 THE COURT: WE'RE BACK ON THE RECORD IN THE MATTER
20 OF UNITED STATES VERSUS GAMBARYAN AND OTHERS.

21 MR. STANLEY -- WHERE'S MR. STANLEY?

22 WHERE WERE YOU AT 9:30?

23 MR. STANLEY: I APOLOGIZE, YOUR HONOR. IT WAS A
24 TRAFFIC ACCIDENT, AND I GOT CAUGHT BEHIND IT. I DID TRY TO
25 CONTACT ALL THE PARTIES, AND I APOLOGIZE.

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1 THE COURT: ALL RIGHT. LET ME GO AHEAD AND TAKE
2 UP WHERE I WAS, AND THAT IS I'M NOT GOING TO TAKE UP THE
3 ISSUE OF WHETHER THERE WAS OR WAS NOT AN EXIGENCY BECAUSE I
4 DON'T THINK IT'S REQUIRED.

5 I THINK THE ISSUE FIRST TO BE CONFRONTED, THE
6 LEGAL QUESTION, IS WHETHER OR NOT REDACTION IS APPROPRIATE
7 OF THIS WARRANT TO TAKE OUT ANY AND ALL STATEMENTS THAT
8 RELATE TO OBSERVATIONS MADE POST ENTRY.

9 ONCE WE DECIDE THAT, WHICH IS A LEGAL QUESTION,
10 THEN THE REMAINING QUESTION WOULD BE WHETHER OR NOT THE
11 REMAINING STATEMENTS IN THE WARRANT WILL BE SUFFICIENT TO
12 ESTABLISH PROBABLE CAUSE.

13 AS WE APPROACH THAT, THERE'S ANOTHER LEGAL
14 QUESTION WHICH IS WHETHER FEDERAL OR STATE LAW APPLIES.

15 AND ONCE WE DETERMINE THAT, THEN WE HAVE TO MAKE
16 THE DETERMINATION AS TO WHETHER WHAT WAS BEFORE THE
17 MAGISTRATE, THE STATE MAGISTRATE AT THE TIME, UNDER
18 WHICHEVER STATE OF THE LAW THAT I DETERMINE -- AFTER I HEAR
19 FROM YOU -- THEN WE WILL DETERMINE WHETHER OR NOT THERE'S
20 PROBABLE CAUSE.

21 IF THERE IS PROBABLE CAUSE, THEN THE MOTIONS WILL
22 BE DENIED. OTHERWISE, THERE WILL BE A DIFFERENT RULING.

23 THAT IS WHERE I SEE THIS CASE GOING. I DON'T SEE
24 THERE'S REALLY ANY DISPUTED ISSUES OF MATERIAL FACT AS TO
25 ANY OF THOSE ISSUES. AND SO I REALLY DON'T THINK AN

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1 EVIDENTIARY HEARING IS REQUIRED.

2 IT MAY BE REQUIRED IF WE WERE TO GET INTO
3 EXIGENCY, BUT IT MAY BE REQUIRED IF WE WERE TO DECIDE THAT
4 THERE WOULD BE NO REDACTION. SO THOSE ARE ISSUES THAT MIGHT
5 COME UP BUT MAY NOT COME UP, DEPENDING UPON HOW I RULE ON
6 THE LEGAL ISSUES.

7 SO, MR. REED, YOU FILED A MOTION ALSO ON BEHALF OF
8 MR. GAMBARYAN.

9 LET'S START WITH THE FIRST LEGAL ISSUE I WANT TO
10 TALK ABOUT WITH YOU. ARE YOU GOING TO SPEAK ON BEHALF OF
11 THE OTHER MOVANTS ALSO, OR ARE YOU SPEAKING ONLY ON BEHALF
12 OF MR. GAMBARYAN?

13 MR. REED: I'M SPEAKING ON BEHALF OF THE PEOPLE
14 WHO JOINED IN THE MOTION, ALL THE PEOPLE WHO JOINED IN THE
15 MOTION. AND YOUR HONOR, WITH YOUR PERMISSION, I WAS GOING
16 TO FOCUS ON EXIGENCY ARGUMENTS.

17 I DID INTEND TO DO SOME CROSS-EXAMINATION OF
18 DETECTIVE COYLE; BUT SINCE WE'RE BEYOND THAT AND WE'RE GOING
19 TO TALK ABOUT THESE OTHER ISSUES, THE AREA I WAS GOING TO
20 FOCUS ON WITH RESPECT TO THE ARGUMENTS BEFORE THE COURT THIS
21 MORNING WAS WHETHER OR NOT THERE WAS PROBABLE CAUSE UNDER
22 STATE LAW, WHETHER STATE LAW SHOULD BE APPLIED.

23 HOWEVER, MR. BROOKLIER OR MR. WALSH DID WANT TO
24 DISCUSS WITH YOU THE ISSUE OF WHETHER OR NOT WONG SUN
25 APPLIED, WHETHER REDACTION IS APPROPRIATE. THEY DID WANT TO

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1 COVER THOSE AREAS WITH YOU AS WELL.

2 THE COURT: OKAY. SO LET ME GO AHEAD AND HAVE
3 EITHER MR. BROOKLIER AND/OR MR. WALSH TALK TO ME FIRST ABOUT
4 WHETHER REDACTION IS APPROPRIATE, AND THEN AS WE GO, THEN
5 WE'LL TALK ABOUT WHETHER IT'S STATE OR FEDERAL LAW AND THEN,
6 HOWEVER IT APPLIES, WHETHER THERE'S PROBABLE CAUSE.

7 MR. REED: VERY WELL, YOUR HONOR.

8 THE COURT: ALL RIGHT. MR. WALSH.

9 I HOPE YOU FOLKS WON'T REPEAT YOURSELVES, BUT OF
10 COURSE, I WILL PERMIT ANY LAWYER WHO WANTS TO SPEAK TO
11 SPEAK. BUT I SURE HOPE THAT YOU'RE NOT GOING TO REPEAT
12 YOURSELVES BECAUSE I THINK, AS I HAVE SPENT QUITE A BIT OF
13 TIME THINKING THIS THROUGH, I THINK I'M PRETTY WELL ADVISED
14 ON THE ISSUES, BUT I'M GLAD TO HEAR FROM YOU.

15 MR. WALSH.

16 MR. WALSH: YES, YOUR HONOR. OUR POSITION IS THAT
17 THE NINTH CIRCUIT CASE LAW THAT ALLOWS REDACTION, THE REED
18 AND THE VASEY CASE, REALLY MISS --

19 THE COURT: AND THE HECKENKAMP CASE, WHICH IS A
20 MORE RECENT 2007 CASE.

21 MR. WALSH: THEY HAVE BASICALLY NOT FOLLOWED THE
22 UNITED STATES SUPREME COURT'S DECISIONS IN SEGURA AND
23 MURRAY BECAUSE, IF YOU ANALYZE THE FACTS OF THE SEGURA AND
24 MURRAY CASE --

25 THE COURT: LET ME ASK YOU A THRESHOLD QUESTION.

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1 LET'S SAY YOU'RE RIGHT BUT, BECAUSE THE NINTH
2 CIRCUIT CASES ARE POST SUPREME COURT CASES AND BECAUSE TWO
3 OF THOSE THREE CASES THAT YOU CITED -- THAT IS, REED AND
4 HECKENKAMP -- SPECIFICALLY CITE MURRAY AND PURPORT TO SAY
5 THAT THIS IS IMPLICITLY CONSISTENT WITH MURRAY --

6 THEY CITE MURRAY, AND THEN THEY GO ON AND SAY
7 "REDACTION IS FINE."

8 -- DO I HAVE ANY AUTHORITY TO SAY, YOU KNOW WHAT,
9 CIRCUIT, YOU JUST GOT IT WRONG?

10 THAT'S NOT THE WAY I READ THOSE CASES. MY STRONG
11 FEELING -- AND I'LL BE GLAD TO HEAR FROM YOU IF YOU HAVE A
12 CITATION FOR ME -- IS THAT I HAVE NO AUTHORITY. EVEN IF I
13 DISAGREE AND EVEN IF I AGREE WITH YOU, I HAVE NO AUTHORITY,
14 GIVEN THAT TEMPORAL LINEUP, FOR ME TO SAY "THE NINTH CIRCUIT
15 IS WRONG AND I'M NOT BOUND BY IT."

16 THE ONLY TIME I CAN SAY THAT IS IF THERE IS AN
17 INTERVENING HIGHER COURT AUTHORITY. SO IF HECKENKAMP, REED,
18 AND THE OTHER CASE -- I THINK, VASEY -- HAD BEEN DECIDED AT
19 TIME ONE, BUT THERE IS A U.S. SUPREME COURT CASE DECIDED AT
20 TIME TWO AND I'M OF THE VIEW THAT THE U.S. SUPREME COURT
21 CASE UNDERCUT THE VITALITY OF THOSE NINTH CIRCUIT CASES
22 DECIDED AT TIME ONE, THEN THE LAW IS VERY CLEAR THAT I HAVE
23 TO FOLLOW WHAT THE SUPREME COURT SAID, NOTWITHSTANDING WHAT
24 THE NINTH CIRCUIT HAD PREVIOUSLY SAID.

25 THAT'S NOT WHAT WE HAVE HERE.

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1 DO YOU HAVE SOME AUTHORITY AS A THRESHOLD MATTER
2 THAT, GIVEN THE TEMPORAL LINEUP HERE, THAT I CAN EVEN BE
3 PERMITTED TO DISAGREE WITH WHAT THE NINTH CIRCUIT SAYS?

4 MR. WALSH: WELL, THE ONLY AUTHORITY IS THE
5 STARE DECISIS PRINCIPLE THAT THE COURT IS BOUND BY THE
6 HOLDINGS OF THE UNITED STATES SUPREME COURT DECISIONS
7 PRIMARILY.

8 THE COURT: BUT THEY'RE NOT SAYING THAT THEY'RE
9 NOT BOUND. THEY'RE PURPORTING TO SAY OUR DECISION IN REED
10 AND HECKENKAMP IS FULLY CONSISTENT WITH MURRAY; IN FACT, WE
11 CITE MURRAY.

12 ISN'T REALLY YOUR ARGUMENT, THEN, YOU SHOULD GO TO
13 THE CIRCUIT AND SAY "THOSE PANEL DECISIONS ARE JUST WRONG,
14 AND YOU NEED TO REVERSE IT EN BANC," FAILING WHICH, YOU NEED
15 TO TAKE IT TO THE SUPREME COURT AND SAY, "HEY, THE NINTH
16 CIRCUIT IS NOT FOLLOWING WHAT YOU'RE SAYING IN MURRAY AND
17 THIS REDACTION THING IS ILLEGITIMATE"?

18 BUT YOU CAN'T COME TO A DISTRICT JUDGE, UNDER
19 THESE CIRCUMSTANCES IT SEEMS TO ME, AND SAY THAT I HAVE THE
20 AUTHORITY TO DO WHAT YOU'RE ASKING ME.

21 IF YOU HAVE SOME DIFFERENT AUTHORITY, GIVEN THIS
22 TEMPORAL LINEUP THAT, NEVERTHELESS, I CAN RECONSIDER IT --
23 IN EFFECT -- AND REJECT VERY CLEAR CIRCUIT AUTHORITY IN
24 HECKENKAMP, 2007 CASE; REED, VASEY -- I THINK THOSE ARE 1980
25 OR '90S CASES. UNLESS YOU HAVE THAT AUTHORITY, WE'RE

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1 WASTING OUR TIME BECAUSE I CAN'T DO WHAT YOU ASKED ME TO DO.

2 MR. WALSH: WELL, OUR POSITION IS WE BELIEVE THE
3 COURT CAN DO IT, THE COURT CAN MAKE A DETERMINATION THAT
4 IT'S BOUND BY THE DECISIONS OF THE UNITED STATES SUPREME
5 COURT OVER THOSE OF THE NINTH CIRCUIT.

6 I UNDERSTAND THE COURT'S POSITION THAT THAT'S A
7 DIFFICULT WAY OF RULING SINCE THE COURT IS ALSO BOUND BY
8 NINTH CIRCUIT DECISIONS.

9 THE COURT: IT'S ONLY DIFFICULT IN DOING -- IT'S
10 NOT DIFFICULT IF THERE'S BEEN AN INTERVENING SUPREME COURT
11 CASE.

12 I HAVE EVERY RIGHT AND AUTHORITY TO SAY THAT THE
13 INTERVENING CASE, IF I BELIEVE UNDER MY NINTH CIRCUIT
14 AUTHORITY, THAT I WOULD DISREGARD NINTH CIRCUIT AUTHORITY.

15 THAT'S NOT WHAT HAPPENED HERE. IT'S THE OPPOSITE.

16 THE SUPREME COURT CASES HAPPENED FIRST, AND THE
17 NINTH CIRCUIT CASES PURPORTED TO EMBRACE ONE OF THE CASES
18 THAT YOU CITED AND, YET, FELT THAT REDACTION WAS
19 APPROPRIATE.

20 I DON'T THINK, UNDER THOSE CIRCUMSTANCES, I HAVE
21 ANY RIGHT TO DO SO. ASIDE FROM THAT, I ACTUALLY DISAGREE ON
22 THE SUBSTANCE WITH YOUR ARGUMENT TOO BECAUSE I THINK THERE'S
23 NOTHING IN MURRAY WHICH WOULD SUGGEST THAT THE NINTH CIRCUIT
24 CASES ARE IMPROPER OR INCORRECT.

25 BUT BE THAT AS IT MAY, I THINK THE THRESHOLD

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1 ISSUE -- IF YOU HAVE ANYTHING ELSE TO SAY ABOUT IT, GO
2 AHEAD, BUT I DON'T REALLY THINK THAT SHOULD DETAIN US MUCH
3 LONGER.

4 MR. WALSH: VERY WELL, YOUR HONOR.

5 JUST TO POINT OUT THAT I BELIEVE YOUR HONOR IS
6 CORRECT, THERE'S NOTHING BEYOND SEGURA AND MURRAY. THE U.S.
7 SUPREME COURT HASN'T TAKEN UP THIS ISSUE.

8 AND, SECONDARILY, ON THE MERITS, WE THINK THAT THE
9 APPROPRIATE APPLICATION OF SEGURA AND MURRAY IS THAT THE
10 OFFICERS HAVE TO REDACT THE ILLEGAL INFORMATION FROM THE
11 SEARCH WARRANT AFFIDAVIT BEFORE THEY APPLY TO THE MAGISTRATE
12 BECAUSE THEN THE SEARCH WARRANT AFFIDAVIT TRULY BECOMES AN
13 INDEPENDENT SOURCE -- IT HAS THEIR PRE-EXISTING PROBABLE
14 CAUSE; IT DOESN'T INCLUDE THE INFORMATION OF THE ILLEGAL
15 SEARCH -- AND THEREFORE, THERE'S NO POSSIBILITY THAT THE
16 MAGISTRATE COULD BE INFLUENCED BY THE ILLEGAL SEARCH.

17 AND IN THIS CASE, YOU SEE THE OFFICER'S
18 PRE-EXISTING PROBABLE CAUSE RAISED AN INFERENCE THAT THERE
19 WAS MARIJUANA INSIDE UNIT D, AND IT WAS THE ILLEGAL SEARCH
20 ITSELF WHERE THEY WENT IN WITHOUT THE WARRANT THAT CONFIRMED
21 THAT. AND BASICALLY, THEY PUT IN THE AFFIDAVIT THAT WE HAD
22 THIS PRE-EXISTING PROBABLE CAUSE, WE CONFIRMED IT BY GOING
23 IN WITH ILLEGAL SEARCH AND SAW THE MARIJUANA.

24 SO AT THAT POINT, WHEN THEY PUT THAT IN THE
25 SEARCH WARRANT AFFIDAVIT AND THEY'RE APPLYING FOR A SEARCH

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1 WARRANT AFFIDAVIT, IT'S A HUNDRED PERCENT CERTAINTY, AT THAT
2 POINT IN TIME, THAT THERE'S MARIJUANA IN UNIT D, AND NO
3 MAGISTRATE WOULD EVER DENY ISSUING THAT WARRANT. AND THAT'S
4 THE PROBLEM THAT WE SEE.

5 WE THINK THAT A PROPER ANALYSIS OF MURRAY AND
6 SEGURA IS THAT THE OFFICER HAS TO DO THE REDACTING FIRST,
7 THAT HE CANNOT USE THE INFORMATION FROM THE ILLEGAL SEARCH,
8 THAT HE HAS TO SET FORTH HIS INDEPENDENT INFORMATION,
9 PRE-EXISTING PROBABLE CAUSE IN THE AFFIDAVIT AND THEN SUBMIT
10 THAT TO THE MAGISTRATE IN ORDER TO COMPLY WITH SEGURA AND
11 MURRAY.

12 AND THEN, IN THINKING ABOUT WHY THE CASES AND THE
13 NINTH CIRCUIT CASES AND OTHER CASES HAVE GONE THIS OTHER
14 DIRECTION WHICH ALLOW THE REDACTION, EVEN THOUGH THE ILLEGAL
15 INFORMATION IS PLACED IN THE WARRANT.

16 AND, SECONDARILY, THE SILVERTHORNE LUMBER CASE
17 SEEMS TO HAVE A PRETTY GOOD ANALYSIS AND APPLICATION HERE
18 BECAUSE IN SILVERTHORNE THEY ILLEGALLY SEIZE SOME BOOKS AND
19 RECORDS, AND THEN THE COURT RULED THAT'S AN ILLEGAL SEARCH.
20 SO THEY GAVE THE BOOKS AND RECORDS BACK TO THE DEFENDANT,
21 AND THEN THEY APPLIED FOR THE WARRANT, AND THEN SEIZED THE
22 BOOKS AND RECORDS.

23 AND IT SAYS, IF YOU USE THE INFORMATION THAT THE
24 DEFENDANT NOW HAS THE RECORDS BECAUSE YOU LEARNED OF IT FROM
25 THE FIRST ILLEGAL SEARCH, THEN YOUR SEARCH WARRANT IS

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1 TAINTE BY THAT ILLEGAL SEARCH AND THE SECOND SEIZURE IS
2 ALSO ILLEGAL.

3 AND SO WE THINK THAT THAT ANALYSIS IS MORE
4 APPROPRIATE TO THIS REDACTION APPROACH THAT THE NINTH
5 CIRCUIT HAS TAKEN.

6 AND THEN IN LOOKING BACK AT HISTORICALLY HOW THIS
7 REDACTION AND INDEPENDENT SOURCE CASE WAS APPLIED, IT
8 APPEARS AS THOUGH THE CASES WERE RELYING ON THE
9 UNITED STATES SUPREME COURT CASE IN GIORDANO, WHICH WAS
10 THAT WIRETAPPING CASE WHERE THE HOLDING OF THE CASE WAS
11 THAT, IF THE PROPER JUSTICE DEPARTMENT OFFICIAL DIDN'T
12 AUTHORIZE THE WARRANT FOR A WIRETAP, THEN ALL THE WIRETAP
13 CALLS ARE ILLEGAL.

14 THEN THE GOVERNMENT USED THOSE ILLEGAL CALLS TO
15 OBTAIN A PEN REGISTER, AND THE HOLDING OF THE CASE WAS THAT
16 SINCE THE WIRETAP CALLS WERE ILLEGAL, IT TAINTE THE PEN
17 REGISTER AND REQUIRED THE SUPPRESSION OF THE PEN REGISTER.

18 THE DISSENTING OPINION SAID NO, NO, THERE'S AN
19 INDEPENDENT SOURCE. THEY COULD HAVE GOTTEN THE PEN REGISTER
20 FOR OTHER INDEPENDENT PROBABLE CAUSE, INDEPENDENT OF THOSE
21 PHONE CALLS, BUT THAT'S THE DISSENTING OPINION IN THE CASE.

22 AND THE NINTH CIRCUIT OPINIONS THAT ALLOW THIS
23 REDACTION AND INDEPENDENT SOURCE, THEY KEEP CITING TO THE
24 GIORDANO DISSENTING OPINION AS LEGAL AUTHORITY -- AND
25 ACTUALLY IT'S NOT REALLY LEGAL AUTHORITY. IT'S BASICALLY

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1 THE DICTA OF THAT DISSENTING OPINION IN THE GIORDANO CASE.

2 SO I THINK THERE'S BEEN A MISAPPLICATION OF
3 GIORDANO THAT HAS AUTHORIZED THESE NINTH CIRCUIT CASES TO
4 REDACT AND RETEST WHEN THEY DON'T REALLY FIT WITHIN THE
5 FACTS OF SEGURA AND MURRAY, AND I'LL LEAVE IT AT THAT,
6 YOUR HONOR.

7 THE COURT: YOU KNOW, I'M NOT SAYING THAT YOUR
8 ARGUMENT DOESN'T HAVE SOME FORCE. I THINK IT'S A VERY
9 PLAUSIBLE ARGUMENT.

10 THE ONLY QUESTION I HAVE FOR YOU IS WHAT IS THE
11 CONCEPTUAL DIFFERENCE BETWEEN REDACTION HERE AND REDACTION
12 UNDER FRANKS?

13 MR. WALSH: BECAUSE FRANKS WAS AUTHORIZED BY THE
14 UNITED STATES SUPREME COURT CASE IN FRANKS VERSUS DELAWARE.

15 THE COURT: AND IF THE SUPREME COURT AUTHORIZED
16 REDACTION UNDER CIRCUMSTANCES WHERE THE OFFICER HAD LIED OR
17 HAD BEEN IN RECKLESS DISREGARD OF THE TRUTH, AND THAT'S
18 STILL OKAY TO REDACT AND THEN TO SEE WHETHER OR NOT WE
19 APPLY -- THEN WE APPLY THE MATERIALITY STANDARD AS TO
20 WHETHER OR NOT THERE WAS STILL PROBABLE CAUSE, WHAT MAKES
21 YOU THINK THAT THE SUPREME COURT WOULD NOT BE OF THE SAME
22 VIEW WHEN IT COMES TO THIS SITUATION?

23 MR. WALSH: WELL, THE ONLY RESPONSE IS THAT OUR
24 SITUATION, WHERE THERE'S AN ILLEGAL SEARCH THAT'S PUT IN THE
25 SEARCH WARRANT AND THEN REDACTED, IS VERY CLOSE TO THE

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1 SITUATION OF THE SILVERTHORNE LUMBER COMPANY, WHERE THERE
2 WAS, IN FACT, AN ILLEGAL SEARCH AND SEIZURE OF THOSE BOOKS
3 AND RECORDS, AND THEN THEY WERE RETURNED TO THE DEFENDANT.

4 AND THEN THERE WAS A SUBSEQUENT SEARCH WARRANT
5 AFFIDAVIT, WHICH SPECIFICALLY PUT IN INFORMATION ABOUT THE
6 FIRST ILLEGAL SEARCH; AND SO I WOULD SAY THAT THERE IS AT
7 LEAST A HOPE THAT THE UNITED STATES SUPREME COURT WOULD NOT
8 APPLY THE FRANKS REDACTION FRAMEWORK TO A CASE WHERE THERE'S
9 AN ILLEGAL SEARCH BECAUSE THEY'VE EFFECTIVELY RULED ON IT
10 EARLIER IN THE SILVERTHORNE LUMBER CASE THAT, WHEN YOU HAVE
11 AN ILLEGAL SEARCH, THE INFORMATION FROM THE ILLEGAL SEARCH
12 CANNOT THEREAFTER BE PUT IN A SUBSEQUENT SEARCH WARRANT IN
13 ORDER TO SEIZE ADDITIONAL EVIDENCE.

14 THE COURT: RIGHT.

15 MR. WALSH: THAT'S THE ONLY DISTINCTION THAT I'VE
16 BEEN ABLE TO COME UP WITH BETWEEN FRANKS AND THIS SITUATION.

17 THE COURT: BUT THAT DOESN'T ANSWER THE QUESTION
18 BECAUSE -- ANSWER THE QUESTION "WHY CAN'T YOU DO THE SAME
19 THING" BECAUSE THE SUPREME COURT DID DO THE SAME THING IN
20 FRANKS, ALBEIT IN A DIFFERENT CONTEXT -- ARGUABLY, IN A
21 WORSE CONTEXT WHEN AN OFFICER IS AT LEAST SHOWN TO HAVE, NOT
22 ACTUALLY NECESSARILY, BUT CERTAINLY THE DEFENDANT WOULD HAVE
23 ALREADY HAD TO MAKE A SHOWING THAT THIS WAS A LIE OR
24 RECKLESS DISREGARD OF THE TRUTH. THAT'S PRETTY BAD STUFF.

25 BUT THE SUPREME COURT SAID FINE, CUT IT OUT;

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1 ANYTHING THAT THEY OMITTED THAT THEY SHOULDN'T HAVE, PUT IT
2 BACK IN; TEST IT FOR MATERIALITY.

3 ANYWAY, IT'S AN INTERESTING POINT, AND I THINK YOU
4 MAKE SOME PLAUSIBLE ARGUMENT. ULTIMATELY, I THINK I'M BOUND
5 BY THE CIRCUIT AUTHORITY AND THAT WE SHOULD MOVE ON.

6 MR. WALSH: VERY WELL.

7 THE COURT: ARE YOU ALSO GOING TO ADDRESS OR IS
8 MR. BROOKLIER GOING TO ADDRESS -- I THINK THERE WAS ANOTHER
9 ISSUE, NOT IN TERMS OF REDACTION, BUT IN TERMS OF THE
10 APPLICATION OF STATE LAW OR FEDERAL LAW.

11 MR. REED: I'LL BE DOING THAT, YOUR HONOR.

12 THE COURT: AND, MR. BROOKLIER, MR. REED SAID YOU
13 WERE GOING TO MAKE AN ARGUMENT ABOUT SOMETHING. I'M NOT
14 SURE WHAT THAT IS. I'LL GIVE YOU THE OPPORTUNITY TO DO IT
15 NOW, IF YOU WANT TO.

16 MR. BROOKLIER: IF I MAY, I'LL SEE HOW IT GOES,
17 AND IF IT'S NECESSARY, I'LL LET YOU KNOW.

18 THE COURT: YOU'LL SEE HOW THESE GUYS DO, AND THEN
19 IF THEY NEED TO BE BACKED UP, I GUESS, YOU'LL BACK THEM UP.
20 RIGHT?

21 MR. BROOKLIER: I'M JUST A PINCH HITTER, IN
22 THEORY.

23 THE COURT: OKAY. VERY GOOD. ALL RIGHT.

24 MR. REED, IN TERMS OF STATE OR FEDERAL LAW.

25 MR. REED: YOUR HONOR --

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1 THE COURT: YOU KNOW, ACTUALLY, LET ME HEAR FROM
2 MR. WOLFE ON THAT. OKAY. WHY DON'T YOU HAVE A SEAT.

3 MR. WOLFE, LET ME TALK TO YOU ABOUT THAT.

4 MR. WOLFE, THE GOVERNMENT'S POSITION, WITH ALL DUE
5 RESPECT, IS OVERLY SIMPLIFIED.

6 AND I HAVE SPENT SOME TIME IN LOOKING AT THESE
7 CASES VERY, VERY CLOSELY. AND THESE CASES INCLUDE THE
8 CHAVEZ CASE; A DISTRICT COURT CASE CALLED UNITED STATES
9 VERSUS BRADY; A SUBSEQUENT NINTH CIRCUIT CASE CALLED
10 UNITED STATES VERSUS CORMIER; AND, OF COURSE, THE VERY
11 RECENT NINTH CIRCUIT CASE OF UNITED STATES OF AMERICA VERSUS
12 \$186,000-AND-CHANGE IN UNITED STATES CURRENCY.

13 AND IN LOOKING AT THOSE CASES, AMONG OTHERS, IT
14 APPEARS THAT THE ANALYSIS IS PERHAPS MORE NUANCED THAN THE
15 GOVERNMENT'S OPPOSITION GAVE IT CREDIT FOR.

16 I DON'T THINK ANYBODY REALLY DISPUTES THE GENERAL
17 PROPOSITION THAT, WHEN YOU'RE IN FEDERAL COURT, YOU'RE
18 TALKING ABOUT ADMISSIBILITY OF EVIDENCE, THE FEDERAL RULES
19 APPLY. AND I THINK THE CASES SUCH AS CHAVEZ, BRADY AND
20 CORMIER DO STAND FOR THAT PROPOSITION.

21 BUT THOSE ARE CASES WHERE THE CONTRARY STATE RULE
22 IS JUST SOMETHING THAT STATE COURTS WOULD APPLY SUCH AS
23 CONSENT. IN ORDER TO HAVE CONSENT UNDER THE STATE RULE IN
24 THAT CASE, YOU HAVE TO HAVE AFFIRMATIVELY TOLD THEM "YOU
25 DON'T HAVE TO CONSENT." WELL, THAT'S NOT THE FEDERAL RULE.

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1 WE ALL KNOW THAT. AND IT MAY BE A FACTOR, BUT IT'S NOT
2 ABSOLUTELY REQUIRED.

3 AND THEN I THINK IN THE CHAVEZ CASE, ALTHOUGH THE
4 FACTS ARE SOMEWHAT UNCLEAR, SOMEHOW THE STATE OFFICERS WENT
5 AND GOT SOME BANK RECORDS. OKAY. I DON'T KNOW WHAT THEY
6 DID IN THE BANK RECORDS. PRESUMABLY, THEY GOT SOME BANK
7 RECORDS UNDER STATE LAW THAT WOULD HAVE VIOLATED STATE LAW.

8 OKAY. SO IT MAKES PERFECT SENSE THAT, IF WE'RE IN
9 FEDERAL COURT, EVEN THOUGH THEY GOT IT THAT WAY, WE WOULD
10 APPLY THE FEDERAL STANDARD AS TO WHETHER OR NOT THEY'RE
11 PROPER OR NOT PROPER. LIKewise, THE THIRD CASE WHERE
12 THERE'S A QUESTION AS TO PROBABLE CAUSE. BUT THE MORE
13 GENERALIZED INQUIRY FIRST OF WHAT IS PROBABLE CAUSE, WHAT IS
14 THE STANDARD OF PROBABLE CAUSE?

15 IS IT THE OLD AGUILAR-SPINELLI STANDARD, OR IS IT
16 THE MORE ILLINOIS VERSUS GATES TOTALITY OF THE CIRCUMSTANCES
17 STANDARD. AND OF COURSE, WE WOULD APPLY ILLINOIS VERSUS
18 GATES TOTALITY OF THE CIRCUMSTANCES, REGARDLESS OF IF THE
19 STATE COURTS CLUNG ON TO SPINELLI OR WHATEVER. THAT'S FINE.

20 I DON'T THINK THERE'S REALLY MUCH DISPUTE YET.

21 WHAT WE HAVE HERE IS SOMETHING THAT IS NOT COVERED
22 BY THOSE CIRCUMSTANCES BUT IS REALLY MORE COVERED BY THE
23 SECOND EXCEPTION NOTED IN THE CORMIER CASE; AND THAT IS, IN
24 THIS CASE, THE PROBABLE CAUSE, ALBEIT DETERMINED UNDER THE
25 TOTALITY OF THE CIRCUMSTANCES --

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1 THERE'S NO DISPUTE ANYWAY, BY THE WAY, IN THIS
2 CASE. I DON'T THINK CALIFORNIA CLINGS TO ANY OF THE
3 SPINELLI-AGUILAR STANDARD ANYWAY.

4 BUT WE'RE GOING TO USE THE TOTALITY OF THE
5 CIRCUMSTANCES FOR PROBABLE CAUSE. FAIR ENOUGH. PROBABLE
6 CAUSE IS NOT ASSESSED IN A VACUUM. PROBABLE CAUSE IS
7 INEXTRICABLY INTERTWINED TO THE UNDERLYING STATE LAW
8 VIOLATION.

9 SO HERE, IF THE STATE LAW VIOLATION -- AND
10 CLEARLY THESE OFFICERS WERE DOING IT UNDER STATE LAW.
11 THERE'S NO INDICATION THEY WERE OPERATING WITH FEDERAL
12 OFFICERS SEEKING TO ENFORCE FEDERAL MARIJUANA LAW. VERY
13 MUCH LIKE UNITED STATES VERSUS \$187,000 WHERE THE NINTH
14 CIRCUIT MADE THAT VERY CLEAR AND DREW THAT DISTINCTION.

15 THEN THE PROBABLE CAUSE STANDARD HAS TO BE
16 ATTACHED TO WHATEVER IT IS THAT YOU'RE SEEKING PROBABLE
17 CAUSE THAT'S BASED ON AND, HERE, BASED UPON ALLEGED
18 VIOLATION OF THE MARIJUANA LAWS OF THE STATE OF CALIFORNIA.

19 SO THEN YOU HAVE TO LOOK AT -- YOU NECESSARILY
20 HAVE TO LOOK AT WHAT ARE THE ELEMENTS OF THE UNLAWFUL
21 CULTIVATION OF MARIJUANA UNDER CALIFORNIA LAW.

22 BECAUSE, AS THE NINTH CIRCUIT POINTED OUT IN
23 UNITED STATES VERSUS 186,000, IT WOULD BE A FEDERAL
24 CONSTITUTIONAL VIOLATION IF THERE WAS NO PROBABLE CAUSE TO
25 SEARCH BASED UPON A FAILURE TO HAVE PROBABLE CAUSE

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1 PREDICATED ON THIS STATE LAW VIOLATION.

2 SO IT REALLY IS NOT SOMETHING WHERE WE CAN CLEARLY
3 SAY FEDERAL LAW APPLIES; DOESN'T MATTER. FEDERAL LAW DOES
4 APPLY. BUT IN THIS CASE, IT'S MORE NUANCED BECAUSE IT IS
5 LINKED NECESSARILY TO A STATE LAW VIOLATION.

6 SO MY FEELING IS WE APPLY FEDERAL LAW, BUT WE
7 CANNOT IGNORE WHAT THE ELEMENTS ARE OF A STATE LAW VIOLATION
8 BECAUSE THE PROBABLE CAUSE IS NECESSARILY VIEWED THROUGH THE
9 LENS OF THE ELEMENTS OF THE STATE LAW CRIME.

10 NOW, IF YOU HAVE A DISAGREEMENT WITH THAT, YOU MAY
11 BE HEARD ON THAT. IF YOU DON'T DISAGREE WITH THAT ANALYSIS,
12 I DON'T....

13 MR. WOLFE: YOUR HONOR, PERHAPS I CAN -- I DO
14 DISAGREE. IF YOUR HONOR WANTS TO STOP AT YOUR HONOR'S
15 THINKING THERE....

16 THE COURT: GO AHEAD.

17 MR. WOLFE: YOUR HONOR, I DISAGREE THAT THIS CASE
18 IS LIKE THE SECOND EXCEPTION IN CORMIER, AND I SAY THAT
19 BECAUSE IN CORMIER, THE SECOND EXCEPTION IS FOR SEARCHES
20 INCIDENT TO ARREST.

21 AND IT CANNOT MAKE SENSE -- I SUBMIT, IF THE
22 ARREST AND THE SEARCH TOOK PLACE BY STATE OFFICERS UNDER
23 STATE LAW ON DAY ONE, IT WOULD NOT MAKE SENSE FOR A FEDERAL
24 COURT A WEEK LATER OR A YEAR LATER TO SAY NO, WE'RE GOING TO
25 CONSIDER AN ARREST UNDER FEDERAL LAW.

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1 BUT THIS IS NOT ABOUT A SEARCH INCIDENT ARREST;
2 IT'S ABOUT A SEARCH.

3 AND THE INTERESTING THING ABOUT THE CASES THAT
4 YOUR HONOR CITES ARE THAT CHAVEZ AND CORMIER AND BRADY,
5 BECAUSE THEY RELY ON IT, THEY DERIVED THEIR -- THEY START
6 THE ANALYSIS AT RULE 402 IN RELEVANCE AND SAY THAT ALL
7 EVIDENCE IS RELEVANT WHICH DOES NOT OFFEND THE FEDERAL
8 CONSTITUTION, THE FEDERAL LAW, THE FEDERAL RULES AND
9 REGULATIONS.

10 AND, THEN, CHAVEZ-VERNAZA GOES ON TO MAKE VERY
11 POSITIVE STATEMENTS ABOUT THE VICES OF ALLOWING STATE RULES
12 TO BE CONSIDERED. IT WOULD DESTROY UNIFORMITY. THE
13 CHAVEZ-VERNAZA COURT POINTED TO TWO OTHER CIRCUIT COURTS OF
14 APPEAL THAT DECIDED CASES THE SAME WAY CHAVEZ-VERNAZA
15 DOES.

16 IT WOULD MEAN THAT THE FEDERAL INTERESTS IN
17 ENFORCEMENT ARE AT THE MERCY OF STATE LEGISLATURES AND
18 RULES. IT'S A VERY BRIGHT LINE RULE, AND THE OTHER CASES
19 THAT APPLY THAT ANALYSIS ARE SIMILARLY POSITIVE ABOUT IT.

20 THE 186 OR 187,000-DOLLAR CASE, IT SEEMS TO ME, IS
21 PLAINLY THE OUTLIER, BOTH ON ITS FACTS AND ON ITS ANALYSIS.

22 IT'S AN OUTLIER FOR THREE OR FOUR SEPARATE
23 REASONS. ONE IS THAT THE UNITED STATES DID NOT APPEAL THE
24 DISTRICT COURT SUPPRESSION ORDER IN \$186,000. SO THAT THE
25 CIRCUIT SAYS WE'RE NOT -- IT'S NOT BEFORE US WHETHER THE

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1 COURT WAS RIGHT. THE ONLY THING THAT'S BEFORE US IS THE
2 FACT THAT THE COURT SAID IT'S ILLEGAL UNDER ONE OF TWO
3 THEORIES; WE HAVE TO CHOOSE WHICH ONE WE'RE GOING TO BE
4 BOUND BY SINCE IT IS UNDISPUTED BY THE PARTIES.

5 I HAVE IN MIND --

6 THE COURT: WELL, ACTUALLY THE \$187,000 CASE, THE
7 CIRCUIT DISAPPROVED THE RULE 11 RULING BUT FOUND THAT IT WAS
8 A FOURTH AMENDMENT VIOLATION PRECISELY FOR WHAT I SAID; THAT
9 IS, STATE WARRANTS MUST ADHERE TO FEDERAL CONSTITUTIONAL
10 STANDARDS.

11 SO HERE, THERE IS NO WAY WE CAN DIVORCE PROBABLE
12 CAUSE TO DO THIS SEARCH BECAUSE THE PROBABLE CAUSE TO DO THE
13 SEARCH, IF AT ALL, IS BASED UPON A BELIEF THAT THERE'S A
14 VIOLATION OF STATE LAW.

15 IF THERE IS NO VIOLATION OF STATE LAW OR THERE'S
16 NO PROBABLE CAUSE TO BELIEVE THAT THERE IS A VIOLATION OF
17 STATE LAW, THEN THAT IS A FEDERAL CONSTITUTIONAL VIOLATION
18 FOR THEM TO HAVE SEARCHED THE PLACE.

19 SO THAT'S REALLY THE DISTINCTION.

20 YOU CANNOT, UNDER ANY CIRCUMSTANCES, DIVORCE
21 YOURSELF AS CHAVEZ CAN, AS CORMIER CAN, AS BRADY CAN BECAUSE
22 THOSE CIRCUMSTANCES ARE NOT INEXTRICABLY TIED TO THE MERITS
23 OF A STATE CRIMINAL STATUTE AND ITS ELEMENTS.

24 ONE IS SOMETHING, BANK RECORDS; ONE IS THE CONSENT
25 THING; AND ONE IS A WAY OF VIEWING THE PROBABLE CAUSE WHICH

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1 IS DIFFERENT. NONE OF THAT IS WHAT WE HAVE HERE AND WHAT
2 186,000 HAD, WHICH IS WHERE IT'S INEXTRICABLY LINKED TO
3 THAT.

4 NOW, I'M GOING TO LET YOU FINISH THAT THOUGHT.

5 (PAUSE.)

6 THE COURT: I APOLOGIZE FOR THIS. I JUST GOT A
7 NOTE HERE THAT THERE IS SOMETHING WHERE MR. BROOKLIER IS
8 GOING TO BE NEEDED BEFORE JUDGE WILSON FOR A FEW MOMENTS.
9 SO I'M GOING TO RECESS AND EXCUSE MR. BROOKLIER.

10 PLEASE TRY TO COME BACK JUST AS QUICKLY AS YOU
11 CAN. OKAY.

12 I APOLOGIZE FOR HAVING TO INTERRUPT THAT, BUT YOU
13 CAN PERHAPS GATHER YOUR THOUGHTS IN LIGHT OF WHAT I JUST
14 SAID.

15 MR. BROOKLIER: YOUR HONOR, IT'S JUDGE ANDERSON.

16 THE COURT: JUDGE ANDERSON. I'M SORRY.

17 MR. BROOKLIER: THANK YOU. I'LL BE RIGHT BACK.

18 (RECESS TAKEN 10:16 TO 10:58 A.M.)

19 THE CLERK: PLEASE REMAIN SEATED AND COME TO
20 ORDER. THIS U.S. DISTRICT COURT IS BACK IN SESSION.

21 THE COURT: WE'RE BACK ON THE RECORD IN THE MATTER
22 OF U.S. VERSUS GAMBARYAN AND OTHERS.

23 COUNSEL ARE PRESENT. ALL THE DEFENDANTS ARE
24 PRESENT.

25 ALL RIGHT. MR. WOLFE, THANK YOU FOR YOUR

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1 PATIENCE. LET ME GIVE YOU THE OPPORTUNITY TO RESPOND TO
2 WHAT I HAD PREVIOUSLY SAID BEFORE OUR RECESS.

3 MR. WOLFE: YOUR HONOR, THINKING ABOUT THIS, I'D
4 MAKE THESE POINTS ABOUT WHY THE \$187,000 CASE IS THE OUTLIER
5 IN THE ANALYSIS.

6 IT'S BECAUSE THE FACTS IN THAT CASE ARE UNIQUE, AS
7 THE COURT SAID IN ITS OPINION, AND THE VIOLATION THERE WAS
8 ALSO A FEDERAL VIOLATION; THAT IS, THE VIOLATION WAS
9 ESSENTIALLY A FRANKS VIOLATION.

10 THE COURT, IN ITS OPINION, MADE THE POINT AGAIN
11 AND AGAIN THAT THE L.A.P.D. HAD IN HAND INFORMATION THAT THE
12 MEDICAL DISPENSARY WAS NOT ONLY NOT COMMITTING A CRIME, BUT
13 ITS ACTIVITY WAS PROBABLY LEGAL UNDER CALIFORNIA LAW. AND
14 THE COURT MADE THE POINT THAT, IN PAGE 952, THEY RECITE HALF
15 A PAGE OF MATERIAL ABOUT WHY THE INFORMATION THAT THE
16 L.A.P.D. HAD IN DISCUSSING WHY THE DISTRICT COURT REJECTED
17 THE PROBABLE CAUSE ANALYSIS.

18 THE DISTRICT COURT -- THE ANALYSIS DESCRIBED ON
19 PAGE 948, THE POINT YOUR HONOR MADE ABOUT THE COURT
20 REJECTING THE RULE 11 ANALYSIS.

21 THE COURT: THE RULE 41 ANALYSIS.

22 MR. WOLFE: I'M SORRY.

23 THE COURT: THE RULE 41 ANALYSIS.

24 MR. WOLFE: YES, I'M SORRY. I MISSPOKE,
25 YOUR HONOR.

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1 THEY MADE THE POINT THAT THE DISTRICT COURT SAID
2 THAT THE FOURTH AMENDMENT MANDATES THAT A DEFENDANT BE
3 PERMITTED TO CHALLENGE A WARRANT AFFIDAVIT VALID ON ITS FACE
4 WHEN IT CONTAINS DELIBERATE OR RECKLESS OMISSIONS OF FACTS
5 THAT TEND TO MISLEAD.

6 AND THE NINTH CIRCUIT ALSO EMPHASIZED TWO OTHER
7 THINGS. IT MADE THE POINT THAT THIS IS A FORFEITURE ACTION
8 WHICH HAS TWO CONSEQUENCES FOR THE ANALYSIS.

9 ONE IS THAT THE COST OF THE EXCLUSIONARY RULE --
10 BECAUSE THAT'S THE DISCUSSION, REALLY -- THE EVIDENCE IN
11 QUESTION THERE AND HERE IS RELEVANT AND RELIABLE EVIDENCE IN
12 THE COMMISSION OF A FEDERAL OFFENSE.

13 THE QUESTION IS WHETHER IT SHOULD BE EXCLUDED AS A
14 DETERRENT; AND THE COURT, THE CIRCUIT, IN \$187,000 MADE THE
15 POINT THAT THE COST OF EXCLUSION IN THAT FORFEITURE CASE IS
16 LESS. THIS IS PAGE 950.

17 THE COURT: BUT, MR. WOLFE, I THINK WE'RE --

18 MR. WOLFE: YES.

19 THE COURT: -- SORT OF GOING DOWN THE WRONG ROAD
20 HERE BECAUSE I DIDN'T SAY ANYTHING ABOUT EXCLUSION YET. SO
21 WE'RE NOT HERE REALLY DISCUSSING WHAT ARE THE PURPOSES OF
22 EXCLUSION WHEN THERE'S NO DETERMINATION THAT THERE'S
23 EXCLUSION.

24 WE'RE AT THE PRELIMINARY STAGE OF DISCUSSING WHAT
25 IS THE LAW THAT WE WOULD LOOK TO THAT SAYS NOTHING ABOUT ANY

1 CONCLUSION THAT I MAY MAKE ABOUT WHETHER OR NOT THERE'S
2 PROBABLE CAUSE EVEN UNDER WHATEVER RULE THAT I MAY APPLY.

3 SO, YOU KNOW, I THINK IT'S PREMATURE TO TALK ABOUT
4 EXCLUSION AND THE COSTS ASSOCIATED WITH EXCLUSION BECAUSE
5 WE'RE NOT THERE YET.

6 MR. WOLFE: YOUR HONOR, I'M NOT SUGGESTING THAT --
7 I'M TRYING NOT TO TALK ABOUT THAT.

8 WHAT I'M TRYING TO IDENTIFY OR FOCUS YOUR HONOR'S
9 ATTENTION ON IS WHY I BELIEVE THE \$187,000 CASE IS THE
10 OUTLIER IN THE ANALYSIS.

11 IT'S NOT IN LINE WITH CHAVEZ-VERNAZA. IT IS AN
12 UNUSUAL CASE, UNIQUE IN ITS FACTS, AS THE CIRCUIT SAID,
13 BECAUSE IT'S IN FORFEITURE WHERE THERE'S A FRANKS VIOLATION
14 WHERE THE COST OF EXCLUSION IS LESS THAN IN A CRIMINAL CASE
15 CERTAINLY TO THE FEDERAL GOVERNMENT AND, MOREOVER, WHERE THE
16 OFFENDER, THE AGENCY THAT COMMITTED THE FRANKS VIOLATION IS
17 VERY LIKELY -- IN THE WORDS OF THE CIRCUIT (AS READ:)

18 "WE RECOGNIZE THE DISTINCT AND DISTURBING POSSIBILITY
19 THAT THE L.A.P.D. COULD PROFIT FROM ITS OWN ILLEGAL
20 ACTIVITY WERE THE GOVERNMENT TO PREVAIL."

21 THE COURT: WELL, LET'S PUT ASIDE THE 186,000
22 BECAUSE I THINK WE'RE SORT OF STEERING THIS CONVERSATION
23 PERHAPS A LITTLE BIT OFF CENTER BECAUSE, REGARDLESS OF
24 186,000, EVEN THESE CASES THAT YOU RELY ON --

25 CHAVEZ AND CORMIER. I DON'T KNOW IF YOU RELY ON

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1 BRADY OR WHETHER I FOUND THAT CASE.

2 BUT BE THAT AS IT MAY, THOSE CASES ALL DO NOT
3 INVOLVE A SITUATION WHERE THE ELEMENTS OF A STATE CRIME ARE
4 NECESSARILY TIED TO THE DETERMINATION OF PROBABLE CAUSE AS
5 IT IS HERE.

6 NOW, YOU SAY YOU DISAGREE THAT THIS IS SIMILAR TO
7 THE SECOND EXCEPTION NOTED BY CORMIER. WELL, IT IS TRUE IN
8 A SENSE THAT OUR CASE IS NOT A SEARCH INCIDENT TO ARREST.
9 SO TO THAT EXTENT, IT IS A DISTINCTION. I AGREE.

10 BUT THAT'S NOT A MATERIAL DISTINCTION, IT SEEMS TO
11 ME, BECAUSE OUR CASE, IF ANYTHING, HAS A TIGHTER CONNECTION
12 TO THE UNDERLYING STATE CRIMINAL OFFENSE BECAUSE THE
13 PROBABLE CAUSE HAS TO BE BASED UPON THAT VIOLATION.

14 AND SO FROM A CONCEPTUAL STANDPOINT, THERE'S
15 REALLY NO DIFFERENCE BETWEEN A SEARCH INCIDENT TO ARREST --
16 WELL, THE SEARCH CAN'T BE GOOD UNLESS THE ARREST WAS GOOD;
17 AND THE ARREST CAN'T BE GOOD UNLESS THE ARREST IS PROBABLE
18 CAUSE. AND PROBABLE CAUSE IS NOT IN A VACUUM, BUT PROBABLE
19 CAUSE IS BASED UPON WHAT'S THE VIOLATION.

20 WE HAVE THE SAME THING HERE. WE JUST DON'T HAVE
21 THAT ADDITIONAL LINK OF SEARCH INCIDENT TO AN ARREST.
22 THAT'S NOT OUR ISSUE.

23 BUT WE ARE LOOKING AT PROBABLE CAUSE, AND PROBABLE
24 CAUSE HAS TO BE TIED TO PROBABLE CAUSE OF WHAT? PROBABLE
25 CAUSE OF WHETHER OR NOT THERE WAS A VIOLATION OF THE

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1 CULTIVATION LAWS OF THE STATE OF CALIFORNIA.

2 MR. WOLFE: YOUR HONOR HAS COME RIGHT DOWN TO WHAT
3 THE DISAGREEMENT IS.

4 I SIMPLY DO NOT BELIEVE THAT THE NINTH CIRCUIT LAW
5 TAKES ACCOUNT OF THE ELEMENTS OF THE STATE'S OFFENSES IN
6 DECIDING PROBABLE CAUSE, AND I SAY THAT BECAUSE OF
7 CHAVEZ-VERNAZA, ITS REFERENCE TO THE PRIOR NINTH CIRCUIT
8 CASES, AND THE SUBSEQUENT ONES THAT YOUR HONOR POINTED OUT
9 BECAUSE, IF THAT'S THE CASE, THEN THERE WILL BE VALID
10 FEDERAL LAWS THAT CANNOT BE ENFORCED USING EVIDENCE FOUND BY
11 STATE OFFICERS.

12 THE COURT: BECAUSE THAT'S A FEDERAL VIOLATION
13 RIGHT THERE. THE FEDERAL VIOLATION -- BECAUSE THE FOURTH
14 AMENDMENT PROBABLE CAUSE STANDARD APPLIES TO THE STATE, NO
15 DOUBT ABOUT THAT, THROUGH THE 14TH AMENDMENT.

16 SO NOW, WHEN THERE IS A VIOLATION, IF THE
17 VIOLATION IS PREDICATED UPON A STATE LAW CRIME, THEN IF
18 THERE'S NO PROBABLE CAUSE TO ARREST OR TO SEARCH BASED UPON
19 THAT, THAT FEDERAL VIOLATION ALREADY OCCURRED.

20 THAT'S NOT A STATE LAW VIOLATION ANYMORE. THAT IS
21 A FEDERAL VIOLATION OF THE FEDERAL CONSTITUTION AND
22 THERE'S -- NOTHING IN CHAVEZ, NOTHING IN BRADY, NOTHING IN
23 CORMIER IS OF THAT KIND BECAUSE THOSE VIOLATIONS OF STATE
24 LAW THAT WOULDN'T MAKE ANY DIFFERENCE THAT WOULD STILL BE
25 FINE TO USE IN THE FEDERAL PROSECUTION DO NOT LINK

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1 THEMSELVES TO AN ANALYSIS OF THE ELEMENTS OF PROBABLE CAUSE.

2 BECAUSE IF YOU LOOK AT CHAVEZ, CHAVEZ IS NOT A
3 PROBABLE CAUSE TO DETERMINE WHETHER OR NOT THERE'S ANY RIGHT
4 TO ARREST HIM UNDER STATE LAW. CHAVEZ INVOLVES STATE
5 OFFICERS GOING AND GETTING SOME FINANCIAL DOCUMENTS --
6 EXACTLY HOW THEY GOT IT, IT WASN'T EVEN CLEAR, BUT THEY'RE
7 GETTING THE FINANCIAL DOCUMENTS.

8 LET'S SAY THAT WAS A VIOLATION, THEY GOT IT IN
9 VIOLATION OF STATE LAW. THAT FACT IS NOT LINKED, TIGHTLY OR
10 OTHERWISE, TO THE UNDERLYING VIOLATION.

11 SO IT DOESN'T MAKE ANY DIFFERENCE. THERE IS NO
12 VIOLATION THERE OF A CONSTITUTIONAL MANNER, FEDERAL
13 CONSTITUTIONAL MANNER.

14 SAME THING WITH RESPECT TO THE CONSENT TO SEARCH.
15 OKAY. WASHINGTON -- I THINK IT'S WASHINGTON. MAYBE IT'S
16 OREGON, I FORGOT. I THINK IT'S WASHINGTON HAS A RULE THAT
17 CONSENT CANNOT BE PROPER UNLESS THE OFFICER SAID, "YOU DON'T
18 HAVE TO CONSENT."

19 THAT'S NOT A FEDERAL CONSTITUTIONAL RULE. THERE
20 IS NO LINK TO A PARTICULAR STATE LAW ON WHICH PROBABLE CAUSE
21 IS BASED. IT'S COLLATERAL TO IT, AND THAT'S NOT A FEDERAL
22 RULE. SO WE DON'T ENFORCE IT.

23 BUT WHEN WHAT DEFINES PROBABLE CAUSE IS BASED UPON
24 A STATE VIOLATION AND IF IT'S ABSENT UNDER THAT ANALYSIS,
25 THAT ITSELF IS A FEDERAL CONSTITUTIONAL VIOLATION. AND SO

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1 WE DO ENFORCE THAT.

2 AND I DON'T THINK ANY OF THESE CASES SUGGEST THE
3 CONTRARY; IF ANYTHING, I THINK IT SUPPORTS IT. BUT, YOU
4 KNOW, I THINK MAYBE WE'RE GOING AROUND AND AROUND A LITTLE
5 BIT. I APPRECIATE YOUR VIEW. AS YOU CAN SEE, I'M NOT SOLD
6 ON IT.

7 BUT IF YOU WANT TO CONCLUDE BY WHATEVER IT IS YOU
8 WANT TO WRAP UP WITH, I'LL BE GLAD TO ENTERTAIN IT.
9 OTHERWISE, I THINK WE'RE GOING TO MOVE ON.

10 MR. WOLFE: I UNDERSTAND EXACTLY WHAT YOUR HONOR
11 IS SAYING, AND I DO SIMPLY DISAGREE.

12 I BELIEVE THE CHAVEZ-VERNAZA RULE WOULD NOT
13 MEASURE PROBABLE CAUSE IN A FEDERAL CRIMINAL CASE BY THE
14 ELEMENTS OF THE STATE STATUTE BECAUSE THE VICE OF DOING SO
15 IS THAT RELEVANT AND RELIABLE EVIDENCE WILL NOT BE ADMITTED
16 IN A FEDERAL CASE FOR WHICH THERE IS PROBABLE CAUSE.

17 AND I THINK THAT'S EXACTLY THE POINT THAT THEY
18 MAKE.

19 WE AGREE WITH THE SECOND AND THIRD CIRCUITS THAT
20 REQUIRING FEDERAL DISTRICT COURTS TO LOOK TO STATE LAW WHEN
21 DETERMINING THE ADMISSIBILITY OF EVIDENCE OBTAINED IN
22 ACCORDANCE WITH FEDERAL LAW WOULD HAMPER THE ENFORCEMENT OF
23 VALID FEDERAL LAWS AND UNDERMINE THE POLICY FAVORING
24 UNIFORMITY OF FEDERAL EVIDENTIARY STANDARDS.

25 THE EFFECT WILL BE THIS SEARCH IS VALID IN THE 36

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1 STATES WHERE THERE'S NO MEDICAL -- THAT IS, UNDER THE
2 DEFENDANT'S ARGUMENT -- THE SEARCH IS VALID IN THE 36 STATES
3 WHERE THERE'S NO MEDICAL MARIJUANA RULE AND INVALID IN THE
4 14 WHERE THERE IS. IT WILL EVEN VARY WITHIN THE CIRCUIT.
5 SO THERE'S A DIFFERENT RULE IN THE NINTH CIRCUIT FOR
6 CALIFORNIA AND THE OTHER STATES.

7 THE COURT: OKAY. I THINK I'VE HEARD SUFFICIENTLY
8 FROM YOU ON THAT. I APPRECIATE YOUR ARGUMENT.

9 MR. REED, DO YOU WANT TO BE HEARD ON THIS ISSUE?

10 MR. REED: NO, YOUR HONOR. WE AGREE WITH THE
11 COURT.

12 THE COURT: OKAY. THE NEXT ISSUE WHICH I WILL
13 WANT TO ADDRESS WITH YOU, MR. REED, IS WITH REDACTION, WHICH
14 I AM LIKELY TO CONCLUDE THAT THERE CAN BE UNDER CIRCUIT LAW,
15 AND UNDERSTANDING THAT THE PROBABLE CAUSE DETERMINATION
16 WITHOUT, LET'S SAY, THE OBSERVATIONS MADE POST-ENTRY.

17 SO, AS REDACTED, WHATEVER IS LEFT OVER AFTER
18 REDACTION WHETHER OR NOT THERE IS PROBABLE CAUSE, AND I'LL
19 HEAR FROM YOU ON THAT.

20 MR. REED: WELL, THERE CERTAINLY WOULDN'T BE
21 PROBABLE CAUSE, YOUR HONOR, BECAUSE EVERYTHING THAT WAS SEEN
22 WAS CONSISTENT WITH LAWFUL ACTIVITY, LAWFUL MARIJUANA
23 ACTIVITY UNDER PROP 215, UNDER THE HEALTH AND SAFETY CODE
24 11362, WHICH WE'VE ATTACHED TO OUR BRIEFING.

25 THE GUIDELINES BY THE ATTORNEY GENERAL SET FORTH

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1 VERY SPECIFICALLY THAT PEOPLE CAN ACT IN COLLECTIVES AND
2 GROW MARIJUANA. AND THEREFORE, ALL THE ACTIVITY THAT WAS
3 SEEN BY THE OFFICERS PRIOR TO ENTRY IS COMPLETELY CONSISTENT
4 WITH LAWFUL ACTIVITY.

5 LET'S TALK ABOUT THE PROBABLE CAUSE IN DETAIL AND
6 SEE WHETHER OR NOT IT WAS ALL CONSISTENT WITH LAWFUL
7 ACTIVITY.

8 OF COURSE, WE HAVE AN INFORMANT IN THE CASE, AS
9 THE COURT KNOWS. AND THE INFORMANT INDICATED THAT HE SAW
10 SEVERAL PLANTS INSIDE THE WAREHOUSE. "SEVERAL PLANTS" COULD
11 MEAN FOUR OR FIVE, SIX, OR SEVEN. IT DOESN'T TELL US
12 EXACTLY HOW MANY PLANTS WERE INVOLVED.

13 THE OFFICER GOES TO THE FACILITY, THE UNIT, BY
14 HIMSELF. HE SETS UP SURVEILLANCE. HE'S BY HIMSELF. HE
15 SEES A CAR WHICH MATCHES THE ANONYMOUS TIP THAT WAS GIVEN.
16 HE SEES A BLACK MERCEDES PARKED NEAR UNIT D.

17 NOTHING INCONSISTENT THERE. NOTHING TELLING US
18 THAT THERE'S A VIOLATION OF SOME STATE CRIMINAL LAW AT THAT
19 POINT.

20 HE SEES ANOTHER PERSON ARRIVE, MR. GAMBARYAN,
21 ARRIVING IN A SILVER HONDA ACCORD. NOTHING WRONG WITH
22 SOMEBODY ARRIVING AT A UNIT IN A CAR, IN A HONDA.

23 NOW, HERE, AT THIS POINT, HE SEES JACK GAMBARYAN
24 AND GRIGOR GARIBYAN REMOVE A PROPANE TANK AND A BAG
25 CONTAINING BAMBOO STALKS FROM THE HONDA, AND THEY CARRY THEM

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1 INTO UNIT D.

2 NOTHING ILLEGAL ABOUT THAT BECAUSE THAT IS
3 CONSISTENT WITH LAWFUL COLLECTIVE MARIJUANA CULTIVATION
4 UNDER PROP 215.

5 THEY SEE MR. IGARIAN ARRIVE IN AN AUDI. HE MEETS
6 MR. GAMBARYAN. NOW, HERE IS SOMETHING THAT MIGHT BE AN
7 ISSUE IN THIS CASE, YOUR HONOR. AND I'M SURE THE COURT
8 STUDIED IT IN DETAIL.

9 BUT WHAT OCCURS AT THIS POINT IS THAT OFFICER
10 COYLE SAYS BOTH IN HIS POLICE REPORT AND IN THE DECLARATION
11 IN SUPPORT OF THE SEARCH WARRANT THAT, WHEN THAT AUDI
12 ARRIVED, HE SAW GAMBARYAN COME OUT FROM THE DOOR AND PLACE A
13 BLACK PLASTIC BAG WITH SOME KIND OF UNKNOWN OBJECT INTO
14 IGARIAN'S CAR.

15 NOW, THE COURT WILL NOTE THAT, WHEN IT READ THE
16 GOVERNMENT'S RESPONSE TO OUR BRIEF, IN THAT DECLARATION THAT
17 WAS ATTACHED TO THAT OPPOSITION, DETECTIVE COYLE'S
18 DECLARATION STATED SOMETHING DIFFERENT; AND WE'RE HOPING
19 THAT THE COURT DOESN'T RELY ON THAT SOMETHING DIFFERENT IN
20 MAKING ITS PROBABLE CAUSE ANALYSIS BECAUSE WHAT HE SAID IN
21 HIS DECLARATION WAS (AS READ:)

22 "EVEN IF CIRCUMSTANCES HAD DICTATED THAT WE SHOULD NOT
23 OR COULD NOT ENTER UNIT D, I WOULD HAVE SOUGHT A SEARCH
24 WARRANT FOR UNIT D IN VIEW OF THE PROBABLE CAUSE TO
25 BELIEVE THAT EVIDENCE OF AN INDOOR MARIJUANA GROW WAS

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1 IN THE UNIT, PARTICULARLY SINCE THE BLACK BAG OF
2 MARIJUANA PLANTS HAD JUST BEEN TAKEN OUT OF UNIT D."

3 BUT HE NEVER SAW ANY BLACK BAG OF MARIJUANA PLANTS
4 TAKEN OUT OF UNIT D. HE ONLY SAW THEM AT A LATER TIME AFTER
5 THE SEARCH WARRANT WAS SERVED.

6 THE COURT: WHAT YOU MEAN IS THAT HE SAW A BLACK
7 BAG BEING TAKEN OUT OF THE UNIT. HE DIDN'T KNOW THE BLACK
8 BAG CONTAINED MARIJUANA. THAT'S WHAT YOU'RE SAYING.

9 MR. REED: EXACTLY WHAT I'M SAYING.

10 THE COURT: OKAY.

11 SO WHAT YOU'RE SAYING IS THAT YOU BELIEVE THAT I
12 SHOULD NOT CONSIDER AS PART OF PROBABLE CAUSE THE CONTENT OF
13 THE BLACK PLASTIC BAG.

14 MR. REED: EXACTLY RIGHT, YOUR HONOR.

15 THE COURT: OKAY.

16 MR. REED: AND THAT'S CONFIRMED. HIS OBSERVATIONS
17 ARE CONFIRMED IN HIS POLICE REPORT. HE SAYS THAT HE DIDN'T
18 REALIZE --

19 THE COURT: I UNDERSTAND. I UNDERSTAND.

20 MR. REED: SO MOVING ON, WE HAVE THIS BLACK
21 MYSTERIOUS BAG BEING TAKEN OUT FROM THE DOOR AND PLACED INTO
22 A CAR. NOTHING ILLEGAL ABOUT THAT.

23 DETECTIVE COYLE APPROACHED IGARIAN TO SPEAK WITH
24 HIM, AND HE SMELLED THE ODOR OF MARIJUANA EMANATING FROM
25 MR. IGARIAN -- PERFECTLY CONSISTENT WITH SOMEBODY OPERATING

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1 A LAWFUL CULTIVATION COLLECTIVE UNDER CALIFORNIA LAW.
2 NOTHING ILLEGAL ABOUT THAT.

3 HE ASKED WHAT TYPE OF BUSINESS THIS WAS OF
4 MR. IGARIAN. NOW, MR. IGARIAN BECOMES NERVOUS AT THAT
5 POINT. HERE WE HAVE AN INDIVIDUAL WHO IS FROM A DIFFERENT
6 COUNTRY; HE'S NERVOUS; HE'S IN THE PRESENCE OF A POLICE
7 OFFICER.

8 WE CITED SOME CASES IN OUR BRIEF THAT, BECAUSE A
9 PERSON IS NERVOUS IN FRONT OF A POLICE OFFICER OR DOESN'T
10 ANSWER THE POLICE OFFICER'S DIRECT QUESTIONS, THAT DOESN'T
11 PROVIDE SUFFICIENT PROBABLE CAUSE IN THE PROBABLE CAUSE
12 ANALYSIS, BUT THAT'S WHAT OCCURRED.

13 AND SO WE'RE ASSERTING TO THE COURT THAT THAT'S
14 NOT MUCH OF SOME KIND OF NEW FACT WHICH DEVELOPS PROBABLE
15 CAUSE IN ORDER TO SUSPECT A CRIME.

16 A PERSON FROM ANOTHER COUNTRY PROBABLY CAN'T SPEAK
17 ENGLISH VERY WELL, BEING NERVOUS IN THE PRESENCE OF A POLICE
18 OFFICER AND NOT ANSWERING THE DETECTIVE'S --

19 THE COURT: ARE YOU JUST GUESSING THAT HE CAN'T
20 SPEAK ENGLISH VERY WELL?

21 MR. REED: NO, HE CAN, YOUR HONOR, BUT HE'S NOT --

22 THE COURT: BECAUSE OTHERWISE, I WAS GOING TO ASK
23 WHETHER OR NOT MR. STANLEY WOULD NEED AN INTERPRETER FOR
24 HIM. NOBODY IS SUGGESTING --

25 DOES HE NEED AN INTERPRETER, MR. STANLEY?

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1 MR. STANLEY: YOUR HONOR, YOU'RE NOT REFERRING TO
2 MY CLIENT.

3 THE COURT: OKAY. I'M SORRY.

4 MS. BAGHDAIAN: WE HAVE NOT JOINED IN ON THAT
5 MOTION. YOU ARE ACTUALLY REFERRING TO MY CLIENT.

6 THE COURT: BUT HE DOESN'T NEED AN INTERPRETER
7 ANYWAY, DOES HE?

8 MS. BAGHDAIAN: NO, HE DOESN'T.

9 MR. REED: AND HE'S NERVOUS. SO NOW GAMBARYAN IS
10 OUTSIDE AS WELL.

11 NOW, DETECTIVE MCKINNEY, HIS PARTNER, BY THAT
12 TIME, HAS APPROACHED. AND THERE'S NO SUSPICIOUS ACTIVITY
13 THAT'S GOING ON TO THIS POINT -- NO GUNS ARE SEEN, NO KINDS
14 OF GANG COLORS. JUST PEOPLE COMING AND GOING, DRESSED -- I
15 TAKE IT -- NATURALLY. NOTHING TO KEY THE SENSES OF AN
16 INVESTIGATING OFFICER THAT SOME KIND OF ILLEGAL ACTIVITY OR
17 GANG ACTIVITY OR ANYTHING IS TAKING PLACE THAT'S ILLEGAL.

18 MCKINNEY APPROACHES GAMBARYAN -- THE PARTNER OF
19 DETECTIVE COYLE -- AND HE ASKED TO SPEAK TO HIM. AND HE
20 SMELLS THE ODOR OF MARIJUANA COMING OFF OF GAMBARYAN,
21 MCKINNEY DOES. NOTHING ILLEGAL ABOUT THAT. THAT'S
22 CONSISTENT WITH LAWFUL CULTIVATION UNDER CALIFORNIA STATE
23 LAW. AT THAT POINT, THAT'S WHEN THE OFFICERS KNOCK ON THE
24 DOOR, AND THEY GO INSIDE.

25 SO THAT'S THE PROBABLE CAUSE THAT WE HAVE.

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1 THE COURT: BEFORE THEY WENT INSIDE, THEY ALSO
2 SMELLED MARIJUANA EMANATING FROM THE DOOR.

3 MR. REED: AFTER THEY OPENED IT.

4 THE COURT: THAT'S NOT WHAT IT SAYS. WHERE DOES
5 IT SAY THAT?

6 MR. REED: (AS READ:)

7 "HE KNOCKED ON THE DOOR OF UNIT D. THERE WAS NO
8 ANSWER. OFFICER GODOY AND TWO OFFICERS SMELLED THE
9 ODOR OF MARIJUANA EMANATING FROM THE LOCATION."

10 IT'S KIND OF UNCLEAR AS TO WHETHER THE DOOR WAS
11 OPEN, YOUR HONOR, OR NOT, AT THAT POINT.

12 THE COURT: WELL, IT CERTAINLY DOESN'T SAY "I
13 OPENED THE DOOR AND THEN SMELLED IT."

14 MR. REED: YOU'RE CORRECT, YOUR HONOR.

15 BUT IN ANY CASE, THERE'S NOTHING WRONG TO SPARK OR
16 TRIGGER A POLICE OFFICER'S SUSPICION THAT THERE IS AN
17 UNLAWFUL MARIJUANA GROW BECAUSE THE SMELL COMING FROM INSIDE
18 A UNIT IS CONSISTENT WITH LAWFUL CULTIVATION, AS I SAY,
19 UNDER THE MARIJUANA ACT THAT WAS ENACTED BY THE STATE OF
20 CALIFORNIA.

21 THE COURT: ACTUALLY, IF YOU READ THE SEARCH
22 WARRANT AFFIDAVIT, IT SAYS THAT (READING:)

23 "WHILE AT THE DOOR, THEY DETECTED A STRONG ODOR OF
24 MARIJUANA EMITTING FROM THE LOCATION. BASED ON THE
25 INFORMATION AND OBSERVATION, AN OPINION WAS FORMED THAT

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1 MARIJUANA WAS BEING CULTIVATED INSIDE."

2 NEXT PARAGRAPH:

3 "OFFICER GODOY CONDUCTED A KNOCK ON THE DOOR."

4 SO I THINK, FAIRLY READ, THIS MEANS THAT THEY
5 SMELLED THE ODOR, AND THEN THEY KNOCKED ON THE DOOR, AND
6 THEN NOBODY ANSWERED, AND THEN THEY OPENED IT.

7 MR. REED: YES, YOUR HONOR.

8 THE COURT: OKAY.

9 MR. REED: SO THAT'S WHAT WE HAVE. THEY OPEN THE
10 DOOR, AND THEY GO IN.

11 THE COURT: RIGHT.

12 MR. REED: THAT'S ALL THE PROBABLE CAUSE THAT THEY
13 HAVE. THIS IS CONSISTENT WITH A LAWFUL CULTIVATION. THERE
14 IS NO PROBABLE CAUSE TO SUSPECT THAT A CRIME IS OCCURRING.
15 THERE'S NO INVESTIGATION OF --

16 THE COURT: JUST A MINUTE.

17 WHY IS THAT CONSISTENT WITH LAWFUL CULTIVATION?
18 NOT ANYBODY -- EVEN UNDER THE C.U.A. AND M.M.P.A., NOT JUST
19 ANYBODY CAN CULTIVATE. YOU HAVE TO HAVE -- AND YOU GIVE ME
20 THE ATTORNEY GENERAL'S GUIDELINES AND SO FORTH.

21 YOU HAVE TO HAVE GONE THROUGH SOME HOOPS IN ORDER
22 TO BE ABLE TO COME TOGETHER AS A COLLECTIVE; YOU HAVE TO
23 HAVE SOME QUALIFICATIONS; YOU HAVE TO ENSURE THAT THERE IS
24 QUALIFICATION FOR THE COLLECTIVE BEFORE YOU CAN CULTIVATE.

25 YOU MAKE IT SOUND LIKE UNDER CALIFORNIA LAW, YOU

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1 AND I COULD JUST GO OUT THERE AND SAY "LET'S GO AHEAD AND
2 CULTIVATE SOME MARIJUANA." WE CAN'T DO THAT.

3 MR. REED: WELL, YOUR HONOR, WE'RE TALKING ABOUT A
4 PROSPECTIVE ANALYSIS, NOT A HINDSIGHT ANALYSIS.

5 THE COURT: I'M TALKING ABOUT AT THE TIME. WHAT
6 EVIDENCE DID THEY HAVE?

7 NOW YOU -- AND YOU'RE DOING A VERY GOOD JOB,
8 MR. REED, IN TERMS OF DISSECTING ALL OF THESE FACTORS FOR
9 PROBABLE CAUSE. OKAY. THAT'S VERY EFFECTIVE IF THAT'S WHAT
10 YOU WANT TO DO, BUT IT'S TOTALLY INEFFECTIVE, AS FAR AS I'M
11 CONCERNED, WHEN WE'RE TALKING ABOUT THE TOTALITY OF THE
12 CIRCUMSTANCES.

13 SURE, ONE THING COULD BE TOTALLY INCONSISTENT WITH
14 INNOCENCE, AND ANOTHER THING MAY BE CONSISTENT WITH
15 INNOCENCE. THAT'S NOT IN THE NATURE OF A PROBABLE CAUSE
16 ANALYSIS AS I SUSPECT THAT YOU WELL KNOW.

17 A PROBABLE CAUSE ANALYSIS IS A TOTALITY OF THE
18 CIRCUMSTANCES WHERE A REASONABLE PERSON WOULD VIEW ALL
19 CIRCUMSTANCES WITHOUT COMPARTMENTALIZING ONE AND THEN THE
20 OTHER AND THEN THE OTHER.

21 SURE, IF YOU COMPARTMENTALIZE ANY ONE THING OR TWO
22 THINGS OR THREE THINGS, IT COULD BE EXPLAINED AWAY; BUT
23 THAT'S INCONSISTENT WITH LOGIC AND COMMON SENSE IF OUR IDEA
24 IS AND THE RULE IS AND THE LAW IS THAT WE HAVE TO LOOK AT IT
25 UNDER THE TOTALITY OF THE CIRCUMSTANCES.

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1 THE TOTALITY OF THE CIRCUMSTANCES HERE SHOWS, IT
2 SEEMS TO ME, THAT YOU HAVE THE TIP, WHICH IN AND OF ITSELF,
3 YOU'RE RIGHT, IT'S NOT GOING TO AMOUNT TO A WHOLE LOT, AND
4 CERTAINLY IT'S NOT GOING TO AMOUNT TO PROBABLE CAUSE.
5 YOU'RE RIGHT ABOUT THAT.

6 BUT THE TIP WAS PARTIALLY CORROBORATED, NOT ONLY
7 WITH THE EXISTING CAR THERE, BUT THE SOMEWHAT PREDICTIVE
8 NATURE OF THE ARRIVAL OF THE SECOND CAR.

9 YOU'VE GOT THE BLACKED OUT WINDOWS, WHICH IS
10 CONSISTENT WITH THE EXPERIENCE OF THE OFFICER IN TERMS OF
11 HIS EXPERIENCE AND THE INDOOR MARIJUANA GROW, THE PROPANE
12 TANK, THE BAMBOO STALKS.

13 THOSE ARE ALSO CORROBORATIVE OF THE TIP AND
14 CONSISTENT WITH HIS EXPERIENCE AS A SEASONED INVESTIGATOR
15 THAT THESE ARE FOR MARIJUANA GROW.

16 THEN YOU HAVE IGARIAN, WHO IS THERE AND -- VERY
17 MUCH UNLIKE \$186,000 WHEN OFFICER LOPEZ WENT THERE, MR. FEIL
18 AND ALL OF THE OTHER PEOPLE WENT AND SAID WHOA, WAIT A
19 SECOND. EVERYTHING IS FINE. WE'RE A COLLECTIVE. YOU SEE?
20 LOOK, WE INCORPORATED AS A COLLECTIVE; WE GOT ALL THESE
21 DOCUMENTS. YOU KNOW, HANG AROUND. LOOK, THIS IS WHAT
22 HAPPENS. WE'VE GOT NOTHING TO HIDE.

23 ON THE OTHER HAND, MR. IGARIAN'S BEHAVIOR IS
24 HIGHLY SUSPICIOUS WHERE, YOU KNOW, HE DOESN'T SAY, WELL,
25 YEAH, I HAVE A COLLECTIVE GOING ON HERE. YOU KNOW, SURE

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1 WE'RE GROWING, BUT WE'RE GROWING AS A COLLECTIVE, AND IT'S
2 ALL MEDICAL MARIJUANA, AND WE ONLY GIVE IT TO QUALIFIED
3 PATIENTS OR PEOPLE WITH I.D. CARDS -- YOU KNOW, ALL OF THIS.
4 THERE'S NOTHING LIKE THAT.

5 INSTEAD, HE MAKES STATEMENTS, WHICH HE DIDN'T HAVE
6 TO MAKE, BUT HE DID MAKE STATEMENTS WHICH WERE OBVIOUSLY
7 UNTRUE.

8 HE WAS IN THERE FOR 15 MINUTES. HE ASKED HIM
9 "WHAT'S GOING ON IN THERE?" AND HE SAID, "GEE, I DON'T KNOW
10 WHAT'S GOING ON IN THERE."

11 "WHAT DID YOU BRING INTO THE -- "

12 "I DON'T KNOW WHAT WAS IN THAT BAG."

13 AND THEN HE WAS OVERTLY NERVOUS AND EVASIVE, AND
14 THEN YOU HAVE THE SMELL OF MARIJUANA.

15 THERE'S NOTHING HERE TO INDICATE THAT THERE'S ANY
16 KIND OF A COLLECTIVE. NOTHING. ZERO. THERE'S NO
17 INDICATION THAT THEY HAVE GONE THROUGH ALL THE
18 REQUIREMENTS -- AND THERE ARE PLENTY -- IN TERMS OF BEING A
19 LAWFUL COLLECTIVE.

20 AND THE ONLY THING YOU MIGHT SAY, WHICH YOU
21 HAVEN'T, BUT I SUSPECT YOU PROBABLY WOULD SAY IS WHAT YOU
22 DID IN YOUR PAPERS -- AND IT'S FAIR ENOUGH -- IS THAT
23 SUPPOSEDLY EACH OF THE THREE MOVANTS HAD SOME KIND OF A
24 DOCTOR'S RECOMMENDATION.

25 OKAY. NOT CLEAR WHETHER OR NOT THE OFFICER KNEW

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1 ABOUT IT. BUT JUST FOR PURPOSES OF THESE DISCUSSIONS, SO
2 THAT THERE IS NO MATERIAL DISPUTE OF FACT, LET'S ASSUME THAT
3 THEY WERE AWARE THAT THERE WERE SOME MEDICAL DOCTOR'S
4 RECOMMENDATION OR SOME DOCTOR'S RECOMMENDATION.

5 IN AND OF ITSELF, IN THE TOTALITY OF THE
6 CIRCUMSTANCES, IS THAT ENOUGH TO SAY PROBABLE CAUSE DOES NOT
7 EXIST BECAUSE THEY CANNOT SAY THAT THIS WAS A ILLEGAL
8 MARIJUANA CULTIVATION?

9 REMEMBER, THE C.U.A. AND THE M.M.P.A. RELATES ONLY
10 TO CREATE AN AFFIRMATIVE DEFENSE. THEY DO NOT WORK A
11 FUNDAMENTAL CHANGE IN CALIFORNIA LAW WHICH SAYS EVERYTHING
12 IS LEGAL TO CULTIVATE, AND IT'S ONLY THE EXCEPTION THAT IT'S
13 ILLEGAL NOW.

14 IT'S NOT THAT. IT'S STILL ILLEGAL TO CULTIVATE
15 MARIJUANA EXCEPT IN THE CARVE-OUT SITUATION WHERE YOU ARE A
16 LAWFUL COLLECTIVE ONCE YOU HAVE MET ALL THE REQUIREMENTS OF
17 IT. THAT'S AN AFFIRMATIVE DEFENSE UNDER CALIFORNIA LAW.

18 NOW, IF THEY WERE AWARE OF CERTAIN THINGS, THEN
19 YES, OF COURSE, THEY SHOULD TAKE THAT INTO CONSIDERATION.

20 BUT THE ONLY AWARENESS, ARGUABLY, THAT THEY HAD OF
21 THIS HAVING ANYTHING TO DO WITH A COLLECTIVE WOULD BE
22 POSSIBLY THESE RECOMMENDATIONS BECAUSE TO SAY, EVERY TIME
23 THAT THERE IS A CULTIVATION OPERATION, YOU HAVE TO PRESUME
24 THAT IT IS PURSUANT TO A LAWFUL COLLECTIVE, I THINK IS TO
25 TURN THE LAW ON ITS HEAD BECAUSE THEN THERE WOULDN'T BE AN

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1 AFFIRMATIVE DEFENSE.

2 THAT WOULD JUST BE THE LAW, AND THEN THERE WOULD
3 BE AN EXCEPTION. THERE WAS A VIOLATION OF THE LAW, WHEREAS
4 THIS IS STILL A VIOLATION OF LAW BUT FOR THIS EXCEPTION.

5 SO, AS YOU CAN TELL, I'M NOT PERSUADED THAT THERE
6 IS NO PROBABLE CAUSE, GIVEN THE TOTALITY OF THE
7 CIRCUMSTANCES.

8 MR. REED: ANOTHER FACTOR, YOUR HONOR, IN THE
9 TOTALITY OF THE CIRCUMSTANCE ARGUMENT IS THE FACT THAT THE
10 WHOLE CULTURE, THE WHOLE ENVIRONMENT IN TERMS OF STATE LAW
11 ENFORCEMENT AGENCIES PROCEEDING AGAINST MARIJUANA CRIMES HAS
12 BEEN CHANGED SINCE THE ENACTMENT OF THE M.M.P.A. AND THE
13 C.C.U. IT'S CHANGED.

14 THE COURT: YOU MEAN THE C.U.A.

15 MR. REED: YES, THE C.U.A.

16 THAT'S PART OF THE TOTALITY OF THE CIRCUMSTANCES.

17 THE OFFICERS ARE NOW VERY KNOWLEDGEABLE ABOUT
18 THESE LAWS. THEY HAVE TO HAVE RECEIVED TRAINING ABOUT THESE
19 NEW LAWS, OBVIOUSLY, IN ORDER TO CARRY OUT THEIR DUTIES.
20 THE ATTORNEY GENERAL, AS THE COURT KNOWS, HAS RELEASED
21 GUIDELINES WITH RESPECT TO THESE POLICE OFFICER
22 INVESTIGATIONS.

23 SO THAT, WHEN THEY GO TO THESE FACILITIES OR
24 APPROACHING A UNIT, IT'S OUR POSITION THAT THEY HAVE A
25 DUTY -- STATE LAW ENFORCEMENT OFFICERS HAVE A DUTY TO MAKE

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1 SOME KIND OF INQUIRY TO DETERMINE WHETHER OR NOT THERE IS A
2 LAWFUL CULTIVATION GOING ON OR IF IT'S AN UNLAWFUL
3 CULTIVATION. AND WHEN THEY HAVE MADE NO ATTEMPT WHATSOEVER
4 TO MAKE THAT DETERMINATION, THAT'S PART OF THE PROBABLE
5 CAUSE ANALYSIS.

6 THAT'S PART OF THE PROBLEM. THERE'S NO PROBABLE
7 CAUSE BECAUSE THEY HAVEN'T TAKEN ANY STEPS TO NEGATE THE
8 EXISTENCE OF A LAWFUL COLLECTIVE, AND THAT WASN'T DONE IN
9 THIS CASE. THEY JUST BARGED RIGHT IN AFTER THEY CAME INTO
10 CONTACT --

11 THE COURT: I DON'T BELIEVE THE LAW IS IT'S THEIR
12 DUTY TO NEGATE AN AFFIRMATIVE DEFENSE.

13 THEY CANNOT IGNORE THAT WHICH IS THERE; YOU'RE
14 RIGHT. BUT I DON'T KNOW THAT YOU HAVE CITED ME ANY CASE
15 LAW. IN FACT, THE CASE LAW APPEARS FROM CALIFORNIA TO BE
16 CONTRARY THAT THEY HAVE ANY OBLIGATION TO INVESTIGATE AN
17 AFFIRMATIVE DEFENSE.

18 NOW, I'VE GIVEN THAT POINT, ALSO, SOME THOUGHT
19 BECAUSE YOU TALK ABOUT WELL, THEY SHOULD HAVE INVESTIGATED.

20 MY FIRST REACTION WAS, WELL, IF THEY HAD, THERE'S
21 NOTHING THEY WOULD HAVE FOUND BECAUSE YOU CERTAINLY HAVE
22 PRESENTED NOTHING TO SUGGEST THAT THIS WAS A LAWFUL
23 COLLECTIVE.

24 BUT THEN I THOUGHT ABOUT IT SOME MORE, AND PERHAPS
25 THAT'S NOT REALLY THE PROPER ANALYSIS BECAUSE THAT MAY BE

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1 TOO RESULT-ORIENTED IN TERMS OF PROBABLE CAUSE ANALYSIS.

2 SO THE BEST WAY TO APPROACH IT, PERHAPS, IS TO
3 SAY, EVEN IF THERE WERE SOME DUTY TO INVESTIGATE, THE
4 FAILURE TO INVESTIGATE UNDER THE CIRCUMSTANCES, WOULD THAT,
5 IN ADDITION TO ALL OF THE OTHER FACTS, BE SUFFICIENT TO
6 VITIATE ANY PROBABLE CAUSE BECAUSE THAT WOULD NOT DEPEND
7 UPON THE RESULT OF THE INVESTIGATION, OBVIOUSLY.

8 AND I HAVE CONSIDERED THAT AS WELL, AND MY VIEW
9 TENTATIVELY IS THAT NO, IT DOESN'T COME CLOSE TO VITIATING
10 PROBABLE CAUSE.

11 BUT BE THAT AS IT MAY, IF YOU HAVE ANYTHING
12 FURTHER TO SAY, FINE, AND I'LL HEAR ANY OTHER COUNSEL WHO
13 WANTS TO SPEAK ON IT AND, OF COURSE, MR. WOLFE SHOULD HAVE
14 AN OPPORTUNITY.

15 MR. REED: NOTHING FURTHER, YOUR HONOR.

16 BUT I DID WANT TO MAKE A RECORD SO THAT THE RECORD
17 IS COMPLETE, THAT WE DON'T KNOW WHAT THE COURT'S GOING TO DO
18 IN TERMS OF ITS RULING YET.

19 BUT IF THE COURT COMES TO THE CONCLUSION THAT
20 THERE WAS PROBABLE CAUSE AND IT'S GOING TO DENY THE MOTION,
21 WE AT LEAST NEED A RECORD WITH RESPECT TO THE EXIGENCY
22 PRONG, SO THAT, IF THIS CASE DOES GO ON APPEAL -- AND I'M
23 NOT SAYING IT WILL OR WHAT WILL OCCUR -- WE NEED TO SETTLE
24 THAT PARTICULAR ISSUE SO IT'S NOT REMANDED BACK TO THE COURT
25 IN SOME WAY FOR A HEARING ON EXIGENCY.

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1 DID THE COURT TAKE A LOOK AT THE EXIGENCY ISSUES
2 IN THIS CASE AND COME TO THE CONCLUSION THAT THERE REALLY
3 WAS NO EXIGENCY?

4 THE COURT: I DID TAKE A LOOK AT IT, BUT I
5 CONCLUDE I DON'T -- IF I RULE A CERTAIN WAY, I DON'T NEED
6 TO; AND I DON'T INTEND TO IF I DON'T NEED TO. AND IF IT
7 COMES BACK, IT COMES BACK. WE'LL SEE.

8 MR. REED: VERY WELL, YOUR HONOR.

9 THE COURT: ALL RIGHT. MR. WALSH.

10 MS. BAGHDAIAN: YOUR HONOR, MAY I BRIEFLY, ON
11 BEHALF OF MR. IGARIAN, INTERJECT? I KNOW WE'RE NOT --

12 THE COURT: SURE.

13 MS. BAGHDAIAN: -- PART OF THE SUPPRESSION MOTION.

14 THANK YOU, YOUR HONOR, GOOD MORNING.

15 MELANIE BAGHDAIAN FOR MR. IGARIAN WHO IS NOT PRESENT.

16 I WAS LISTENING TO YOUR HONOR'S ANALYSIS OF THE
17 PROBABLE CAUSE AND HOW IT RELATES TO MY CLIENT, MR. IGARIAN,
18 AND HIS BEHAVIOR AND HOW HE MAY HAVE REACTED WHEN THE POLICE
19 QUESTIONED HIM ABOUT THE TYPE OF FACILITY THAT IT WAS AND HE
20 APPEARED TO BE NERVOUS.

21 AND YOUR HONOR MADE A DISTINCTION WITH THE OTHER
22 CASE THAT YOUR HONOR CITED WHERE THE INDIVIDUAL DID, IN
23 FACT, SAY THIS IS A COLLECTIVE, THIS IS WHAT WE'RE DOING
24 AND, IN FACT, MR. IGARIAN DIDN'T SAY ANY OF THOSE THINGS.
25 AND YOUR HONOR IS, IN FACT, RIGHT. HE DIDN'T.

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1 WHAT I WANTED THE COURT TO KNOW ON BEHALF OF MY
2 CLIENT AND THE OTHER DEFENDANTS WAS THAT WE HAVE NOT JOINED
3 THIS SUPPRESSION MOTION, AND THE REASON WE HAVE NOT JOINED
4 THE SUPPRESSION MOTION IS BECAUSE MY CLIENT DOES NOT, I
5 BELIEVE, HAVE STANDING TO JOIN.

6 AND WE HAVE, IN FACT, BROUGHT FORWARD EVIDENCE TO
7 THE GOVERNMENT THAT THAT WAS, IN FACT, THE FIRST TIME
8 MR. IGARIAN HAD BEEN TO THAT FACILITY AND HE DID NOT HAVE
9 A --

10 THE COURT: BUT THAT'S NEITHER HERE NOR THERE.
11 I'M NOT SURE WHY WE'RE GOING INTO THIS.

12 MS. BAGHDAIAN: THE ONLY REASON I WANTED TO BRING
13 THAT TO THE COURT'S ATTENTION WAS BECAUSE YOUR HONOR DID
14 MAKE THE STATEMENT IN THE PROBABLE CAUSE ISSUE THAT
15 MR. IGARIAN DID NOT SAY ANY OF THOSE THINGS, THAT THIS IS A
16 COLLECTIVE; AND MY PURPOSE OF TELLING THIS TO THE COURT WAS
17 THAT MR. IGARIAN DIDN'T KNOW ANY OF THAT, AND IT WAS HIS
18 FIRST TIME THERE. SO I JUST WANTED TO CLARIFY WITH THE
19 COURT.

20 THE COURT: WELL, THAT'S NEITHER HERE NOR THERE.
21 YOU CAN CLARIFY WHATEVER IT IS. IT'S MEANINGLESS AS FAR AS
22 I'M CONCERNED BECAUSE THIS IS NOT PART OF YOUR MOTION AND
23 IT'S NEITHER HERE NOR THERE.

24 YOU DON'T GET TO SORT OF LIKE SAY, "OH, I DON'T
25 WANT TO BE PART OF THIS MOTION BECAUSE I DON'T THINK I HAVE

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1 STANDING, BUT HERE, I WANT YOU TO HEAR MY FAVORABLE POINT."

2 MS. BAGHDAIAN: NO. I JUST WANTED TO --

3 THE COURT: THAT'S NEITHER HERE NOR THERE.

4 MS. BAGHDAIAN: -- CLARIFY THAT, YOUR HONOR.

5 THANK YOU.

6 THE COURT: ALL RIGHT. VERY GOOD.

7 MR. WALSH.

8 MR. WALSH: YES, YOUR HONOR, IN LOGICAL SEQUENCE,
9 I THINK, THE ARGUMENT I WANTED TO MAKE IS THAT THE COURT HAS
10 TO FOLLOW THE FEDERAL STANDARD OF THE FOURTH AMENDMENT AND
11 DETERMINE WHETHER THERE'S PROBABLE CAUSE TO SEARCH, AND IT
12 REQUIRES A SHOWING OF A FAIR PROBABILITY THAT CONTRABAND OR
13 EVIDENCE OF A CRIME WILL BE FOUND IN A PARTICULAR PLACE.

14 SO THAT'S THE ISSUE THAT THE COURT HAS TO DECIDE.

15 THE COURT HAS ALREADY RULED THAT YOU HAVE TO LOOK
16 AT CALIFORNIA STATE LAW TO MAKE A DETERMINATION WHETHER
17 THERE'S BEEN A CRIMINAL VIOLATION THAT OCCURRED.

18 AND BECAUSE OF THESE MEDICAL MARIJUANA LAWS, NOT
19 ALL CULTIVATION OF MARIJUANA IN CALIFORNIA IS A CRIME.
20 SOMETIMES IT IS A CRIME, AND SOMETIMES IT IS NOT A CRIME.
21 GROWING MEDICAL MARIJUANA FOR MEDICAL PERSONS WITH A
22 PHYSICIAN'S RECOMMENDATION, THE MARIJUANA THAT'S GROWING IS
23 NOT CONTRABAND.

24 UNDER THE FOURTH AMENDMENT, THE POLICE OFFICERS
25 CAN ONLY SEIZE EVIDENCE THAT THEY HAVE REASONABLE SUSPICION

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1 AND REASONABLE CAUSE TO BELIEVE IS CONTRABAND EVIDENCE. AND
2 IT'S OUR POSITION THAT ANY WELL TRAINED NARCOTICS OFFICER IN
3 THE STATE OF CALIFORNIA HAS TO BE AWARE OF THE COMPASSIONATE
4 USE ACT, THE MEDICAL MARIJUANA PROGRAM ACT, THE CALIFORNIA
5 ATTORNEY GENERAL GUIDELINES, AND THE LAW THAT SETS THIS OUT.

6 I MEAN, IT IS TRUE THAT THE MEDICAL MARIJUANA
7 STATUTES PROVIDE A DEFENSE AT THE TIME OF TRIAL, BUT THEY
8 ALSO ESTABLISH THE ELEMENTS OF THE CRIME.

9 AND WHEN A POLICE OFFICER IS CONDUCTING AN
10 INVESTIGATION OF MARIJUANA THAT'S GROWING AT A LOCATION --

11 THE COURT: WELL, THAT'S AN INCONSISTENT STATEMENT
12 BECAUSE AN AFFIRMATIVE DEFENSE IS NOT AN ELEMENT OF THE
13 CRIME.

14 MR. WALSH: WELL, IT WOULD BE AN ELEMENT OF THE
15 ISSUE OF PROBABLE CAUSE BECAUSE --

16 THE COURT: OH, OF COURSE. IT IS SOMETHING THAT
17 IF THEY KNEW SOMETHING AND THEY KNEW IT LIKE PERHAPS WHAT
18 HAPPENED IN THE \$186,000 CASE, OF COURSE, THEY HAVE TO TAKE
19 IT INTO ACCOUNT.

20 THAT'S ALL -- BECAUSE THE PROBABLE CAUSE IS THE
21 TOTALITY OF THE CIRCUMSTANCES, BUT THAT'S WHAT WE'RE DOING.
22 WE'RE LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES PRESENT
23 BEFORE THE OFFICER.

24 MR. WALSH: AND OUR POSITION IS THE OFFICERS ACTED
25 WITHOUT MAKING A DETERMINATION AS TO WHETHER THIS WAS

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1 MEDICAL MARIJUANA OR UNLAWFULLY GROWN MARIJUANA --

2 THE COURT: AND YOU DON'T THINK THAT A REASONABLE
3 PERSON UNDER THE CIRCUMSTANCES GIVEN, AT LEAST, IN PART
4 MR. IGARIAN'S REACTION TO ALL OF THIS, THAT THAT WOULD NOT
5 GIVE RISE FOR A REASONABLE PERSON TO CONCLUDE THAT THERE'S
6 PROBABLE CAUSE THAT THIS WAS AN ILLEGAL GROW, NOT A LEGAL
7 GROW?

8 MR. WALSH: OUR POSITION IS IT WOULDN'T BECAUSE
9 BASICALLY HE GAVE NO INFORMATION. SO IT'S A SITUATION WHERE
10 A PERSON IS QUESTIONED AFTER --

11 THE COURT: HE NOT ONLY GAVE NO INFORMATION -- IF
12 HE SAID, "I DON'T WANT TO TALK TO YOU," THAT'S NO
13 INFORMATION.

14 HE GAVE FACIALLY, SHALL WE SAY, KINDLY, AT LEAST
15 HIGHLY UNLIKELY INFORMATION, BUT MORE LIKELY UNTRUE
16 INFORMATION. TO SAY "I HAVE NO IDEA WHAT'S GOING ON IN
17 THERE" AND "I WAS JUST IN THERE FOR 15 MINUTES," THAT
18 STRETCHES CREDULITY.

19 AND, YOU KNOW, I'M NOT SAYING THAT'S THE ONLY
20 ISSUE, OBVIOUSLY, THE ONLY POINT BECAUSE WE LOOK AT THE
21 TOTALITY, BUT WE CAN'T FORGET THAT EITHER.

22 MR. WALSH: WELL, AND THE OTHER POINT I THINK IS
23 WORTH NOTING IS THAT THE COURT IS TESTING PROBABLE CAUSE
24 AFTER EXCISING THE OBSERVATIONS OF WHAT'S INSIDE THE
25 WAREHOUSE.

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1 SO AT THE TIME THAT THE POLICE OFFICERS WERE
2 DEVELOPING THEIR PROBABLE CAUSE, THEIR PRE-EXISTING PROBABLE
3 CAUSE, THEY DON'T KNOW HOW MANY PLANTS ARE INSIDE THE
4 WAREHOUSE, AND THEY DON'T KNOW THE EXACT RELATIONSHIP OF
5 MR. IGARIAN WHO'S GIVING THESE EVASIVE ANSWERS AND SO ALL --

6 THE COURT: THEY MAY NOT KNOW THE EXACT NUMBER OF
7 PLANTS; BUT THEY HAVE CERTAINLY INDICIA OF A GROW, SOME
8 CULTIVATION EFFORT BECAUSE THE OFFICER DID SAY THAT MY
9 EXPERIENCE IS, YOU KNOW, YOU NEED THESE BAMBOO STALKS IN
10 ORDER TO, YOU KNOW, HELP WITH THE PLANTS AS THEY GET BIGGER
11 AND YOU NEED THIS PROPANE TANK FOR WHATEVER USE THAT PEOPLE
12 DO IN INDOOR GROWS.

13 SO, YOU KNOW, THIS IS NOT JUST SOMETHING SOMEBODY
14 DECIDED TO GO AND GROW ONE LITTLE PLANT OR SOMETHING LIKE.
15 THERE IS INDICATION OF SOME SORT OF GROW.

16 MR. WALSH: AND IT'S OUR POSITION THAT IT'S
17 INCUMBENT UPON THE OFFICER AT THAT POINT, IN ORDER TO MAKE A
18 DETERMINATION WHETHER THIS IS AN ILLEGAL GROW OR A MEDICAL
19 GROW, AND WITHOUT HIM MAKING THAT DETERMINATION AND
20 DEVELOPING AND DECIDING TO STOP AT THAT POINT AND --

21 BECAUSE WHEN WE WERE RETESTING THE SEARCH WARRANT
22 AFFIDAVIT, IT'S AS THOUGH THE OFFICER STOPPED AT THAT POINT
23 AND THEN APPLIED FOR THE SEARCH WARRANT AFFIDAVIT WITH THIS
24 PRE-EXISTING PROBABLE CAUSE.

25 AND OUR POSITION IS THAT'S A PREMATURE STOPPING,

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1 WHICH DOESN'T RESOLVE THE QUESTION OF WHETHER OR NOT THE
2 MARIJUANA THAT'S GROWING -- THAT HE BELIEVES TO BE GROWING
3 IN THERE IS LEGAL OR ILLEGAL, AND HE MAY ONLY SEIZE IT IF
4 IT'S ILLEGAL CONTRABAND.

5 AND I MIGHT POINT OUT, YOUR HONOR, THAT IN THE
6 FIRST PARAGRAPH OF THE ATTORNEY GENERAL'S REPORT, GIVING
7 GUIDELINES FOR THE GROWING OF MEDICAL MARIJUANA, THERE'S A
8 STATEMENT IN THERE THAT (AS READ:)

9 "THE PURPOSE OF THIS REPORT IS -- " NUMBER TWO " -- TO
10 HELP LAW ENFORCEMENT AGENCIES PERFORM THEIR DUTIES
11 EFFECTIVELY AND IN ACCORDANCE WITH CALIFORNIA LAW."

12 SO WHAT IT MEANS IS THAT POLICE OFFICERS HAVE TO
13 BE AWARE OF THIS DISTINCTION BETWEEN CONTRABAND MARIJUANA
14 AND MARIJUANA THAT IS NOT CONTRABAND, THAT IS MEDICAL
15 MARIJUANA. AND WHEN THEY'RE CONDUCTING THESE
16 INVESTIGATIONS, THERE HAS TO BE SOME MINIMAL TYPE OF
17 INVESTIGATION TO RESOLVE THAT ISSUE.

18 WE CAN SAY THAT HE HAD PROBABLE CAUSE TO BELIEVE
19 THERE WAS MARIJUANA IN THE WAREHOUSE, BUT BECAUSE OF THIS
20 DICHOTOMY IN CALIFORNIA LAW, THAT SOME MARIJUANA IS ILLEGAL
21 AND SOME MARIJUANA IS PERFECTLY LEGAL, THAT DICHOTOMY HAS TO
22 BE RESOLVED IN SOME FASHION.

23 THE COURT: I DISAGREE BECAUSE, IN THE ABSENCE OF
24 SOME CLEAR SHOWING THAT A CARVE-OUT IS APPLICABLE, HE HAS NO
25 OBLIGATION TO GO AHEAD AND MAKE SURE THAT HE NEGATES THE

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1 POSSIBILITY OF A LAWFUL CULTIVATION. THAT'S WHAT YOU'RE
2 ARGUING.

3 MR. WALSH: THAT'S WHAT OUR ARGUMENT IS, YES,
4 YOUR HONOR.

5 THE COURT: OKAY. ALL RIGHT. VERY GOOD.

6 MR. WALSH: I THINK MR. BROOKLIER HAD --

7 THE COURT: MR. BROOKLIER --

8 MR. WALSH: -- WANTED TO SHOW --

9 THE COURT: ABSOLUTELY. YOU HAVEN'T BEEN HEARD
10 YET. YOU KNOW, YOU OBVIOUSLY ARE NOT SATISFIED WITH
11 COUNSEL'S ARGUMENT SO FAR. SO YOU'RE GOING TO TRY TO CLEAN
12 IT UP FOR THEM.

13 MR. BROOKLIER: I'M NOT THE CLEAN-UP HITTER,
14 YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MR. BROOKLIER: I'M JUST A PINCH HITTER, VERY
17 RARELY CALLED UPON.

18 THE COURT: OKAY.

19 MR. BROOKLIER: ANYWAY, THERE IS ONE INDICIA THAT
20 NOBODY HAS TALKED ABOUT YET, I DON'T BELIEVE, AND THAT IS MY
21 CLIENT'S DECLARATION THAT GOES TO STANDING, ET CETERA. IN
22 PARAGRAPH 6, HE STATES THAT HE HAD A --

23 THE COURT: I'M SORRY. YOUR CLIENT IS?

24 MR. BROOKLIER: IS HAYK KARAYAN. I'M SORRY,
25 YOUR HONOR.

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1 THE COURT: HAYK KARAYAN. YES, I HAVE HIS
2 DECLARATION HERE. PARAGRAPH 6, DID YOU SAY?

3 MR. BROOKLIER: PLEASE, YOUR HONOR.

4 THE COURT: OKAY. LET ME GO TO THAT.

5 MR. BROOKLIER: I THINK AS THE RECORD STANDS RIGHT
6 NOW, MY CLIENT HAS INDICATED THAT ONE OF THE OFFICERS
7 EXAMINED THE CONTENTS OF HIS WALLET. THIS IS, OF COURSE,
8 PRIOR TO THE TIME THE SEARCH WARRANT WAS SOUGHT, AND
9 MR. KARAYAN SAYS, "HE APPEARED TO HAVE REMOVED MY
10 PHYSICIAN'S RECOMMENDATION, TO HAVE READ IT, AND PLACED IT
11 BACK IN MY WALLET."

12 AS AN OFFER OF PROOF -- I DON'T KNOW IF THE COURT
13 THINKS THIS IS IMPORTANT, BUT HAVING SEEN -- I THINK OFFICER
14 COYLE IS HERE. MY CLIENT, WHO IS SITTING CLOSEST TO
15 YOUR HONOR, HAS INDICATED TO ME. AND THIS IS ONLY AN OFFER
16 OF PROOF THAT IT WAS OFFICER COYLE WHO, IN FACT, SAW THAT
17 AND APPEARED TO HAVE READ HIS --

18 THE COURT: PERHAPS, MAYBE I CAN REMIND YOU OF
19 THIS. I DON'T KNOW WHETHER MAYBE YOU DIDN'T TAKE NOTE OF IT
20 WHILE I MENTIONED IT. I THINK, FOR PURPOSES OF MY ANALYSIS,
21 I -- IN FACT, I MENTIONED TO MR. REED THAT THERE IS EVIDENCE
22 IN THIS RECORD ABOUT EACH OF THE MOVING DEFENDANTS HAVING
23 THIS SO-CALLED DOCTOR RECOMMENDATION.

24 I HAVE CLEARLY READ YOUR CLIENT'S DECLARATION,
25 SPECIFICALLY, PARAGRAPH 6, AS WELL AS ALL OTHER PARAGRAPHS.

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1 AND I DID SAY THAT FOR PURPOSES OF OUR ANALYSIS BECAUSE
2 I'M -- I DON'T THINK WE NEED TO HAVE AN EVIDENTIARY HEARING
3 BECAUSE IT WOULD BE NOT A MATERIAL DISPUTE BECAUSE I'M
4 WILLING TO ASSUME, FOR PURPOSES OF MY ANALYSIS, THAT THE
5 POLICE WERE AWARE OF THESE THREE RECOMMENDATIONS, INCLUDING
6 YOURS.

7 MR. BROOKLIER: THANK YOU, YOUR HONOR.

8 I DID HEAR WHAT YOU SAID, BUT THAT WOULD GET ME TO
9 MY LAST POINT THAT NONE OF THIS WAS PLACED IN THE AFFIDAVIT
10 THAT WAS PRESENTED TO THE MAGISTRATE WHO ISSUED THE SEARCH
11 WARRANT IN THIS CASE.

12 THE COURT: AND I TAKE IT, THEN, YOUR ARGUMENT IS
13 IF IT HAD BEEN PUT BEFORE THE MAGISTRATE, THE STATE
14 MAGISTRATE, THAT THESE THREE DEFENDANTS HAD A DOCTOR'S
15 RECOMMENDATION, THAT SOMEHOW THAT WOULD HAVE IN THE TOTALITY
16 OF THE CIRCUMSTANCES VITIATED PROBABLE CAUSE.

17 MR. BROOKLIER: I THINK A MAGISTRATE CLEARLY COULD
18 HAVE, AT THAT POINT, LOOKED AT IT -- A REASONABLE MAGISTRATE
19 COULD HAVE LOOKED AT IT AND ASKED THEM TO GO BACK AND DO
20 MORE, GET MORE INFORMATION.

21 I THINK THAT'S SOMETHING THAT SHOULD HAVE BEEN
22 GIVEN TO THE MAGISTRATE BECAUSE IT'S A FACT AND SOMETHING
23 FOR THE MAGISTRATE TO CONSIDER. THEY LEFT IT OUT. AND THAT
24 GOES RIGHT TO THE HEART OF OUR ARGUMENT.

25 THE COURT: OKAY.

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1 MR. BROOKLIER: THANK YOU, YOUR HONOR.

2 THE COURT: ANYBODY ELSE?

3 MR. WALSH: JUST TO FOLLOW UP ON THAT, YOUR HONOR.

4 THE COURT: WELL, ALL RIGHT. WE'RE NOT GOING TO
5 KEEP GOING ON, MR. WALSH. I KNOW HOW MUCH YOU'RE ENJOYING
6 THIS, BUT AT SOME POINT, WE HAVE TO MOVE ON.

7 MR. WALSH: OKAY. I'LL TRY TO BE VERY BRIEF.

8 I THINK THE LAST POINT BROUGHT UP BY MR. BROOKLIER
9 BRINGS US WITHIN THE HOLDING OF THE 186,000 FORFEITURE CASE.

10 IN OTHER WORDS, THERE WAS A MATERIAL OMISSION BY
11 THE AFFIANT BY NOT INCLUDING THAT IN THE WARRANT, AND THAT
12 WOULD GO TO THE ISSUE OF WHETHER THIS WAS CONTRABAND
13 MARIJUANA OR LAWFULLY POSSESSED MARIJUANA.

14 THE COURT: IT DOESN'T GO TO THAT AT ALL,
15 NECESSARILY. OKAY.

16 I THINK YOU'RE OVERSTATING IT BECAUSE THE MERE
17 FACT THAT SOMEBODY HAS A RECOMMENDATION FROM A DOCTOR SAYS
18 NOTHING ABOUT LAWFUL CULTIVATION UNDER THE M.M.P.A.,
19 NOTHING. THAT MAY BE ONE REQUIREMENT; THAT MAY BE ONE
20 THING. BUT THERE'S A WHOLE ARRAY OF OTHER THINGS WHICH DO
21 NOT, ARE NOT KNOWN TO -- AND YOU'RE NOT EVEN SAYING THAT
22 THEY EVEN EXISTED -- BUT FINE, WE'RE NOT GOING TO BE
23 RESULT-ORIENTED.

24 WE WILL SORT OF RESIST THE NOTION THAT THERE
25 REALLY ISN'T ANYTHING ELSE BECAUSE OTHERWISE IT WASN'T

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1 PRESENTED TO ME BECAUSE THAT'S NOT REALLY RELEVANT TO MY
2 PROBABLE CAUSE DETERMINATION.

3 BUT THE FACT OF THE MATTER IS THE RECOMMENDATION
4 IS MERELY ONE OF MANY, MANY FACTORS THAT WOULD BE NEEDED TO
5 ESTABLISH THE AFFIRMATIVE DEFENSES UNDER CALIFORNIA LAW.

6 AND IN THIS CASE EVEN IF WE ASSUME THAT THIS WAS A
7 MATERIAL OMISSION -- I DON'T MEAN THAT.

8 I MEAN LET'S ASSUME THAT THIS WAS AN OMISSION,
9 THAT THIS OMISSION EVEN QUALIFIED UNDER FRANKS TO BE PUT
10 BACK IN -- I DON'T THINK IT'S MATERIAL IN LIGHT OF ALL THESE
11 CIRCUMSTANCES, BUT YOU OBVIOUSLY DISAGREE, AND THAT'S YOUR
12 POINT.

13 MR. WALSH: YES, I DISAGREE WITH THAT.

14 THE COURT: ALL RIGHT.

15 MR. WALSH: AND WE THINK IT GOES DIRECTLY TO THE
16 ISSUE OF WHETHER IT WAS CONTRABAND MARIJUANA THAT COULD BE
17 SEIZED UNDER THE FOURTH AMENDMENT.

18 AND THEN THERE WAS ONE OTHER FINAL FACTUAL ISSUE
19 THAT WE WOULD REQUEST AN EVIDENTIARY HEARING ON, AND THAT IS
20 THERE WAS SOME LANGUAGE IN SEGURA THAT STATES THAT THE
21 INDEPENDENT SOURCE DOCTRINE DOESN'T APPLY IF THE OFFICER WAS
22 MOTIVATED TO GET THE SEARCH WARRANT BASED UPON HIS
23 OBSERVATIONS IN THE FIRST ILLEGAL SEARCH.

24 AND THE OFFICER'S FILED A DECLARATION SAYING THAT
25 HE WASN'T MOTIVATED BY THAT, AND WE'D ASK TO HAVE AN

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1 EVIDENTIARY HEARING ON THAT ISSUE, TO CROSS-EXAMINE HIM
2 BECAUSE THAT'S ONE OF THE FINDINGS THAT THE COURT HAS TO
3 MAKE AND --

4 THE COURT: WELL, WE HAVE --

5 MR. WALSH: -- WE HAVE SOME QUESTIONS OF HIM.

6 THE COURT: IT WOULD CERTAINLY BE THE CASE, HAD
7 YOU CHALLENGED HIM. YOU NOWHERE CHALLENGED HIM.

8 I CHALLENGE YOU TO SHOW ME WHERE YOU CHALLENGE
9 THAT STATEMENT. I WAS SPECIFICALLY COGNIZANT OF THAT ISSUE.
10 IT WAS IN THE DECLARATION AT PARAGRAPH 5 OF OFFICER COYLE.
11 YOU FOLKS DID NOT CHALLENGE IT.

12 MR. WALSH: WE BRIEF --

13 THE COURT: NOWHERE DID YOU CHALLENGE IT IN YOUR
14 OPENING BRIEF OR YOUR REPLY BRIEF. SO AS FAR AS I'M
15 CONCERNED, YOU HAVE WAIVED ANY FACTUAL CHALLENGE AS TO THAT,
16 AND I CAN MAKE MY FACTUAL DETERMINATION ON THIS RECORD
17 BECAUSE YOU FAILED TO DO SO.

18 MR. WALSH: WELL, I THINK WE BRIEFED IT IN THE
19 MOVING -- THE PARTIES HIGHLIGHTED THAT THE COURT HAD TO MAKE
20 A FINDING ON THAT, AND THE GOVERNMENT'S RESPONSE WAS TO FILE
21 THAT DECLARATION.

22 THE COURT: WELL, WHY DON'T YOU SHOW ME WHERE YOU
23 SPECIFICALLY SAY THAT, AND IF I'M WRONG, THEN WE CAN HAVE A
24 BRIEF EVIDENTIARY HEARING ON THAT POINT. THAT'S NOT A
25 PROBLEM.

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1 MR. WALSH: PAGE 33 OF THE MOTION TO SUPPRESS, WE
2 MADE THE ARGUMENT AND BRIEFED THE CASES THAT THE ARGUMENT --

3 THE COURT: JUST A MINUTE. LET ME LOOK AT
4 PAGE 33. WHAT LINE?

5 MR. WALSH: THIRTEEN IS JUST THE HEADING.

6 THE COURT: OKAY. DID YOU SAY THAT THE OFFICER
7 WOULD NOT HAVE DONE IT BUT FOR THAT?

8 MR. WALSH: I THINK THAT'S WHAT WE'RE SAYING.
9 WE'RE SAYING THE DECISION TO SEEK THE WARRANT IN THIS CASE
10 WAS PROMPTED BY WHAT THE OFFICER SAW DURING THE ILLEGAL
11 SEARCH --

12 THE COURT: OKAY.

13 MR. WALSH: -- AND THUS THE WARRANT WAS NOT AN
14 INDEPENDENT SOURCE.

15 AND THEN, IN RESPONSE TO THAT, THERE WAS ONE LINE
16 IN DEPUTY COYLE'S STATEMENT WHERE HE SAYS HE WOULD HAVE
17 GOTTEN THE SEARCH WARRANT ANYWAY.

18 THE COURT: RIGHT. AND DID YOU CHALLENGE THAT?
19 NOW THAT HE HAS PUT THAT IN THERE, DID YOU DISPUTE IT?

20 MR. BROOKLIER: YOUR HONOR, MAY I RESPOND TO THAT?

21 THE COURT: YES.

22 MR. BROOKLIER: HOW COULD WE DISPUTE IT BECAUSE IT
23 GOES TO HIS STATE OF MIND? WE WOULD HAVE TO BE
24 MIND-READERS. I THINK OBVIOUSLY -- WITH RESPECT I SAY
25 THIS -- WE DISPUTE IT BECAUSE WE BRING IT UP, BUT THERE

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1 WOULD BE NO PRACTICAL WAY THAT I CAN THINK OF DISPUTING THAT
2 WITHOUT HAVING AN EVIDENTIARY HEARING.

3 THE COURT: DID YOU FOLKS ASK TO CROSS-EXAMINE ON
4 THIS POINT?

5 MR. WALSH: WELL, WE'RE ASKING NOW, YOUR HONOR.

6 THE COURT: BUT YOU DIDN'T ASK IN YOUR PAPERS.

7 MR. WALSH: NO, BUT I THOUGHT THAT WE COULD --

8 THE COURT: WELL, THAT'S FINE. I THINK WE CAN
9 HAVE IT. IF THAT'S WHAT YOU WANT, WE CAN HAVE A BRIEF
10 EVIDENTIARY HEARING AT 1:30, AND I THINK YOU HAVE TO BE BACK
11 AT JUDGE ANDERSON AT 1:00 O'CLOCK?

12 MR. BROOKLIER: YES. HE'S SAID I NEED TO COME
13 BACK AT 1:00 O'CLOCK.

14 THE COURT: THAT'S WHAT I MEAN. YOU'RE AT
15 1:00 O'CLOCK, AND HE ASSURES ME YOU'LL BE BACK BY 1:30.

16 MR. BROOKLIER: YES.

17 THE COURT: OKAY. VERY GOOD.

18 ALL RIGHT. MR. WOLFE, IF YOU WANT TO BE HEARD ON
19 THE ISSUE OF PROBABLE CAUSE, SINCE YOU HAVEN'T HAD A CHANCE
20 TO ADDRESS THAT, I'LL HEAR FROM YOU.

21 MR. WOLFE: EXCUSE ME. YOUR HONOR, YOUR HONOR'S
22 ALREADY SEIZED ON THE POINT THAT THE MEDICAL MARIJUANA IS AN
23 AFFIRMATIVE DEFENSE.

24 I'D MAKE ONLY ONE OTHER POINT. THIS ANALYSIS IS
25 AT THE PROBABLE CAUSE LEVEL. DEFENDANTS SAY THE INFORMATION

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1 IS EQUALLY CONSISTENT WITH LAWFUL AND UNLAWFUL CULTIVATION.

2 PROBABLE CAUSE IS NOT BY A PREPONDERANCE OF THE
3 EVIDENCE. IT'S SIMPLY A FAIR PROBABILITY; AND EVEN IF THE
4 COURT BELIEVED THAT IT WAS EQUALLY CONSISTENT WITH THE TWO,
5 IT'S NOT THE SAME AS THE NEGATING (SIC) OF PROBABLE CAUSE.

6 UNLESS YOUR HONOR HAS A QUESTION, I'LL SUBMIT.

7 THE COURT: DO YOU WANT TO ADDRESS THE ISSUE OF
8 THE EVIDENTIARY HEARING THAT THEY'RE REQUESTING?

9 MR. WOLFE: WELL, I AGREE THAT IT IS A REQUIREMENT
10 THAT THE OFFICER NOT HAVE BEEN MOTIVATED SOLELY BY WHAT HE
11 SAW. WHETHER THEY'VE PROCEDURALLY SATISFIED THE REQUIREMENT
12 IN THEIR REPLY, I WOULD THINK AT LEAST THE INTENTION OF THE
13 LOCAL RULE ON SUPPRESSION MOTIONS IS THAT THEY OUGHT TO HAVE
14 SAID SOMETHING ABOUT A DECLARATION IN THEIR REPLY PAPERS,
15 AND WHETHER THAT AMOUNTS TO A WAIVER, I THINK IS A
16 PROCEDURAL QUESTION FOR THE COURT.

17 THE COURT: ALL RIGHT. LET'S GO AHEAD AND HAVE A
18 LIMITED EVIDENTIARY HEARING AT 1:30. COME BACK AT THAT
19 TIME. MAKE SURE OFFICER COYLE IS HERE.

20 MR. WOLFE: YES, YOUR HONOR.

21 THE COURT: I WILL HAVE HIM TAKE THE STAND AND
22 CONFIRM HIS STATEMENT IN HIS DECLARATION AS HIS DIRECT
23 TESTIMONY, AND THEN HE'LL BE SUBJECT TO CROSS-EXAMINATION
24 BUT ONLY ON THAT ISSUE -- AND NO OTHER ISSUE -- AS TO
25 WHETHER OR NOT, REGARDLESS OF WHAT THEY MAY HAVE SEEN

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1 POST-ENTRY, THAT HE WOULD HAVE SOUGHT A WARRANT BECAUSE
2 THAT'S THE ONLY ISSUE REMAINING.

3 MR. WOLFE: VERY WELL, YOUR HONOR.

4 THE COURT: ALL RIGHT. WE'LL SEE YOU FOLKS AT
5 1:30. THANK YOU VERY MUCH.

6 THE CLERK: THIS COURT NOW STANDS IN RECESS.

7 (WHEREUPON AT 12:05 P.M.

8 THE LUNCH RECESS WAS TAKEN.)

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, DECEMBER 15, 2010

2 1:36 P.M.

3 --OOO--

4 THE CLERK: PLEASE REMAIN SEATED AND COME TO
5 ORDER. THIS UNITED STATES DISTRICT COURT IS BACK IN
6 SESSION.

7 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD
8 IN THE MATTER OF U.S. VERSUS GAMBARYAN, ET AL. DEFENDANTS
9 ARE PRESENT, COUNSEL ARE PRESENT.

10 MR. REED.

11 MR. REED: YOUR HONOR, MR. WALSH IS GOING TO
12 CONDUCT THE EXAMINATION OF DETECTIVE COYLE, BUT I JUST
13 WANTED TO CLARIFY VERY QUICKLY A MINOR POINT, YOUR HONOR,
14 DURING THE PROBABLE CAUSE ARGUMENT SESSION THAT WE HAD.

15 IT WAS MY FAULT THAT I FAILED TO, PERHAPS, RESPOND
16 TO THE COURT WHEN THE COURT WAS DOING THE PROBABLE CAUSE
17 ANALYSIS AND GOING THROUGH ALL THE REQUIREMENTS THAT AN
18 ORGANIZATION HAD TO JUMP THROUGH IN ORDER TO REGISTER IN A
19 PARTICULAR CASE.

20 I THINK THE COURT WAS TALKING ABOUT COOPERATIVES.
21 A STATUTORY COOPERATIVE, I THINK THE COURT WAS THINKING OF
22 WHEN IT WAS TALKING ABOUT ALL THESE DIFFERENT THINGS THAT AN
23 ORGANIZATION HAD TO DO IN ORDER TO BE LAWFUL, WHICH
24 EVIDENTLY HAD NOT BEEN DONE IN THIS PARTICULAR CASE, BUT
25 THIS WAS A COLLECTIVE, YOUR HONOR.

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1 WHEN YOU REVIEW THE REGULATIONS THAT WE SUBMITTED
2 IN SUPPORT OF OUR MOTIONS, TAKE NOTE OF PAGE 8 AND SEE THE
3 DIFFERENCE BETWEEN COLLECTIVES AND COOPERATIVES.

4 WHAT WE HAVE BEEN ALLEGING IN THIS MOTION ALL
5 ALONG IS THAT THIS WAS A COLLECTIVE, NOT A COOPERATIVE.

6 A COLLECTIVE IS JUST AN INFORMAL GROUP OF PEOPLE
7 WHO GET TOGETHER TO FACILITATE COLLABORATIVE EFFORTS IN
8 GROWING MARIJUANA. IT'S AN INFORMAL GROUP, NOTHING HAS TO
9 BE REGISTERED, NOTHING HAS TO BE DONE IN ORDER TO OPERATE AS
10 A COLLECTIVE.

11 I JUST WANTED TO BRING THAT TO THE COURT'S
12 ATTENTION BEFORE IT MAKES ANY FINAL ORDER IN THIS CASE. I
13 THINK IT HAS A LOT TO DO WITH WHETHER THERE WAS SUFFICIENT
14 PROBABLE CAUSE UNDER STATE LAW.

15 WE'RE CONTENDING THIS WAS A COLLECTIVE, NOT A
16 COOPERATIVE, AND THEREFORE, THE POLICE OFFICER SAW THINGS
17 WHICH WERE COMPLETELY CONSISTENT WITH A COLLECTIVE
18 OPERATING, A LAWFUL COLLECTIVE, NOT A COOPERATIVE.

19 THE COURT: SO YOUR VIEW IS THAT UNDER CALIFORNIA
20 LAW ANYBODY CAN GET TOGETHER AND GROW MARIJUANA AND CALL
21 THEMSELVES A COLLECTIVE?

22 MR. REED: NO, THEY HAVE TO HAVE DOCTOR
23 RECOMMENDATIONS.

24 THE COURT: THAT'S IT? JUST DOCTOR
25 RECOMMENDATIONS? SO EVERYBODY SO LONG AS -- OR NOT EVEN

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1 EVERYBODY HERE BECAUSE WE HAVE ONLY, IF ANYTHING, EVIDENCE
2 OF THREE DOCTOR RECOMMENDATIONS AND WE CERTAINLY HAVE MORE
3 PEOPLE INVOLVED IN THE ALLEGED COLLECTIVE THAN THOSE THREE
4 PEOPLE.

5 SO YOUR VIEW IS THAT SO LONG AS SOMEBODY HAS A
6 DOCTOR RECOMMENDATION, THEN ANY NUMBER OF PEOPLE IN ADDITION
7 THERETO CAN DEEM THEMSELVES A COLLECTIVE UNDER CALIFORNIA
8 LAW?

9 MR. REED: AS LONG AS THEY ALL HAVE
10 RECOMMENDATIONS. ALL THE MEMBERS HAVE TO HAVE
11 RECOMMENDATIONS.

12 THE COURT: UH-HUH.

13 MR. REED: AND THEY ALL HAVE TO JOIN COLLECTIVELY
14 AS A GROUP.

15 THE COURT: AND WHAT EVIDENCE DO WE HAVE THAT THEY
16 ALL HAD A DOCTOR RECOMMENDATION, OTHER THAN THESE THREE?
17 MR. IGARIAN DIDN'T HAVE ANY. MR. GARIBYAN, I'M NOT SURE IF
18 MR. GARIBYAN HAD ANY.

19 MR. REED: WE'RE JUMPING TO A HINDSIGHT ANALYSIS
20 NOW AND LOOKING AT IT IN HINDSIGHT. ALL I WAS TRYING TO --

21 THE COURT: I'M JUST SAYING, IT'S NOT THAT IT'S
22 HINDSIGHT.

23 IT'S AT THE TIME THAT IT WAS PRESENTED TO THE
24 OFFICERS, WHEN THEY WERE KNOWN, THERE WAS NOTHING THERE THAT
25 THEY KNEW ABOUT; THEY DIDN'T SEE ANYTHING ABOUT ANY KIND OF

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1 A COLLECTIVE FROM -- I MEAN ANY KIND OF A RECOMMENDATION FOR
2 MR. GARIBYAN OR MR. IGARIAN.

3 MR. REED: AND IT'S OUR POSITION THAT THEY SHOULD
4 HAVE DONE SOME KIND OF INVESTIGATION UNDER THESE NEW LAWS
5 THAT HAVE BEEN HERE IN CALIFORNIA, THEY SHOULD HAVE DONE.

6 THE COURT: BUT OTHER THAN THAT, OTHER THAN THAT,
7 YOU'RE SAYING ALL YOU NEED IS A DOCTOR'S RECOMMENDATION,
8 THEN ANY NUMBER OF PEOPLE COULD GET TOGETHER AND BE A
9 SO-CALLED COLLECTIVE.

10 MR. REED: THAT'S CORRECT. AS LONG AS THEY --

11 THE COURT: AND YOU HAVE AUTHORITY FOR THAT?

12 MR. REED: WELL, IT'S IN THE REGULATIONS,
13 YOUR HONOR.

14 THE COURT: IN THE REGULATIONS. TELL ME WHERE
15 DOES IT SAY --

16 MR. REED: OKAY. TAKE A LOOK AT PAGE 8 OF THE
17 ATTORNEY GENERAL REGULATIONS. IT'S EXHIBIT F TO THE BRIEF
18 THAT DEFINES WHAT COLLECTIVES ARE.

19 THE COURT: OKAY.

20 MR. REED: DOWN AT THE BOTTOM. THE COURT CAN READ
21 THROUGH IT.

22 THE COURT: WHAT PAGE ARE YOU REFERRING TO?

23 MR. REED: PAGE 8 OF THE ATTORNEY GENERAL
24 REGULATIONS DOWN AT THE BOTTOM.

25 "CALIFORNIA LAW DOES NOT DEFINE COLLECTIVES."

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1 THEY HAVE TO ALLOCATE COSTS AMONGST THEMSELVES. THEY ALL
2 HAVE TO JOIN IN AND DO SOMETHING, SHARE COSTS IN THE GROWING
3 OF THE MARIJUANA, SHIFTS, WHATEVER.

4 THE COURT: OKAY.

5 MR. REED: THERE'S NOTHING THAT THEY HAVE TO DO
6 TO REGISTER WITH THE STATE OF CALIFORNIA. IT'S AN INFORMAL
7 GROUP.

8 THE COURT: OKAY.

9 MR. REED: AND THAT'S WHY WE SAY THAT THERE WAS NO
10 PROBABLE CAUSE UNDER STATE LAW IN THIS CASE.

11 THE COURT: MR. WOLFE, DO YOU WANT TO BE HEARD ON
12 THAT LAST ISSUE BEFORE WE GO ON TO THE EVIDENTIARY HEARING?

13 MR. WOLFE: YES, YOUR HONOR.

14 I WOULD POINT OUT THAT THE SECTION THAT DEFENSE
15 COUNSEL URGED ON THE COURT IS ROMAN NUMERAL IV, "GUIDELINES
16 REGARDING COLLECTIVES AND COOPERATIVES." SECTION A THAT HE
17 CITED IS "BUSINESS FORMS." SECTION B IS "GUIDELINES FOR THE
18 LAWFUL OPERATION OF A COOPERATIVE OR A COLLECTIVE." IT
19 REQUIRES NON-PROFIT OPERATION. IT REQUIRES BUSINESS
20 LICENSES, SALES TAX, AND SELLER'S PERMITS.

21 THE COURT: I'M SORRY. WHERE ARE YOU LOOKING AT
22 NOW?

23 MR. WOLFE: PAGE 9 NOW. I'M JUST TURNING OVER THE
24 PAGE. IT REQUIRES APPLICATION AND VERIFICATION,
25 DISTRIBUTION AND SALES TO NON-MEMBERS ARE PROHIBITED, THEY

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1 SHOULD BE ORGANIZED. I'M READING NOW PAGE 9 AT THE VERY TOP
2 OF THE PAGE (AS READ:)

3 "COLLECTIVES AND COOPERATIVES SHOULD BE ORGANIZED WITH
4 SUFFICIENT STRUCTURE TO ENSURE SECURITY, NON-DIVERSION
5 OF MARIJUANA TO ILLICIT MARKETS, AND COMPLIANCE WITH
6 ALL STATE AND LOCAL LAWS."

7 AND I THINK BY THE DEFENDANT'S OWN TERMS, THEY
8 DIDN'T COMPLY WITH THOSE REGULATIONS.

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10 ALL RIGHT. ARE YOU READY TO CALL MR. COYLE?

11 MR. WOLFE: YES, YOUR HONOR.

12 THE GOVERNMENT CALLS TRAVIS COYLE.

13 THE COURT: OKAY. JUST SO THAT WE UNDERSTAND HOW
14 WE'RE GOING TO DO THIS, YOU'RE GOING TO GO AHEAD AND PROFFER
15 HIS DECLARATION ON DIRECT EXAMINATION AND MAKE SURE THAT HE
16 ADOPTS IT.

17 AND THEN I'M GOING TO GIVE COUNSEL AN OPPORTUNITY
18 TO CROSS-EXAMINE ON THAT LIMITED ISSUE AS TO WHETHER OR NOT,
19 REGARDLESS OF WHAT HE MAY HAVE SEEN AFTERWARDS, AFTER THE
20 ENTRY, BUT WHATEVER INFORMATION HE HAD BEFORE HE ENTERED OR
21 ANY OFFICER ENTERED, WOULD HE, HAD HE KNOWN -- WHICH HE DID
22 KNOW OF WHATEVER IT IS THAT HE DID KNOW OF AT THAT POINT --
23 STILL HAVE OBTAINED THE WARRANT.

24 MR. WOLFE: YES, YOUR HONOR.

25 THE COURT: OKAY.

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1 THE CLERK: PLEASE WAIT BEHIND THE COURT REPORTER
2 AND RAISE YOUR RIGHT HAND TO BE SWORN.

3 OFFICER TRAVIS COYLE,
4 PLAINTIFF'S WITNESS, SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: DO YOU SOLEMNLY SWEAR THAT THE
6 TESTIMONY YOU SHALL GIVE IN THE CAUSE NOW PENDING BEFORE
7 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING
8 BUT THE TRUTH, SO HELP YOU GOD?

9 THE WITNESS: YES.

10 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL
11 NAME FOR THE RECORD, SPELLING YOUR NAME FOR THE RECORD.

12 THE WITNESS: TRAVIS COYLE, T-R-A-V-I-S,
13 C-O-Y-L-E.

14 THE COURT: ALL RIGHT. MR. WOLFE.

15 MR. WOLFE: YOUR HONOR, MAY I APPROACH THE WITNESS
16 WITH TWO DOCUMENTS WHICH I'LL IDENTIFY?

17 THE COURT: YES.

18 DIRECT EXAMINATION

19 BY MR. WOLFE:

20 Q. DETECTIVE COYLE, I'M HANDING YOU EXHIBIT A TO THE
21 DEFENDANT'S MOTION AND THE GOVERNMENT'S OPPOSITION TO THE
22 MOTION, PAGES 15 AND 16.

23 WOULD YOU LOOK AT THOSE TWO DOCUMENTS, PLEASE.

24 A. OKAY.

25 Q. TAKING FIRST EXHIBIT A TO THE DEFENDANT'S MOTION, DO

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1 YOU RECOGNIZE THAT DOCUMENT?

2 A. YES.

3 Q. WHAT IS IT?

4 A. IT IS A SEARCH WARRANT THAT I AUTHORED.

5 Q. THAT'S THE AFFIDAVIT THAT YOU SUBMITTED FOR THE SEARCH
6 WARRANT FOR UNIT D?

7 A. YES.

8 Q. WOULD YOU LOOK NOW, PLEASE, AT THE GOVERNMENT'S
9 OPPOSITION AND PARTICULARLY, THE MOTION, PAGES 15 AND 16.

10 A. OKAY.

11 Q. DO YOU RECOGNIZE THOSE TWO PAGES?

12 A. YES.

13 Q. NOW, WHAT ARE THEY?

14 A. IT'S A DECLARATION THAT I REVIEWED AND SIGNED.

15 MR. WOLFE: YOUR HONOR, I HAVE NOTHING FURTHER
16 FOR --

17 THE COURT: WHY DON'T YOU SEE IF HE ADOPTS IT FOR
18 PURPOSES OF HIS DIRECT EXAMINATION.

19 BY MR. WOLFE:

20 Q. IS THERE ANYTHING THAT YOU'VE COME TO LEARN IS NOT TRUE
21 ABOUT EITHER OF THOSE DOCUMENTS?

22 A. NOT THAT I'M AWARE OF.

23 Q. I'LL TAKE THE FIRST ONE. IS EXHIBIT "A" A FAIR AND
24 ACCURATE STATEMENT OF YOUR KNOWLEDGE AT THE TIME YOU SOUGHT
25 THE SEARCH WARRANT FOR UNIT D?

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1 A. YES.

2 Q. AND THE DECLARATION ATTACHED TO THE GOVERNMENT'S
3 OPPOSITION, PAGES 15 AND 16, IS THAT A FAIR AND ACCURATE
4 STATEMENT OF YOUR KNOWLEDGE AND BELIEF ON THE SUBJECT
5 COVERED WITHIN IT?

6 A. YES.

7 MR. WOLFE: NOTHING FURTHER, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 I'M SORRY. WHO'S GOING TO EXAMINE?

10 MR. WALSH: I AM, YOUR HONOR.

11 THE COURT: MR. WALSH, YES.

12 **CROSS-EXAMINATION**

13 BY MR. WALSH:

14 Q. NOW, AT THE TIME OF THE INITIAL ENTRY BY OFFICER GODOY,
15 DID YOU ALSO FOLLOW OFFICER GODOY INTO UNIT D WITHIN A FEW
16 MINUTES AFTER HE ENTERED?

17 A. IT WAS SOME TIME AFTER. IT WASN'T IMMEDIATE, AS I WAS
18 SPEAKING WITH MR. IGARIAN.

19 Q. WAS IT WITHIN THREE TO FIVE MINUTES LATER THAT YOU
20 ENTERED?

21 A. IT WAS -- THAT'S A FAIR ESTIMATE.

22 Q. OKAY. SO THAT'S PRETTY CONTEMPORANEOUS WITH
23 OFFICER GODOY'S INITIAL ENTRY. IS THAT RIGHT?

24 A. I'M NOT SURE WHAT YOU MEAN BY THAT.

25 Q. IT WAS ALMOST AT THE SAME TIME.

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1 A. NO. IT'S NOT ALMOST. IT'S A FEW MINUTES AFTER.

2 Q. OKAY. AND THEN WHEN YOU ENTERED UNIT D ON THAT FIRST
3 OCCASION, DID YOU SEE SEVERAL GROWING MARIJUANA PLANTS THAT
4 ARE REFERRED TO IN THE SEARCH WARRANT AFFIDAVIT?

5 A. YES.

6 Q. OKAY. AND YOU FELT THAT OBSERVING THE SEVERAL GROWING
7 MARIJUANA PLANTS IN UNIT D, UPON THAT FIRST ENTRY INTO
8 UNIT D, ADDED TO YOUR PROBABLE CAUSE TO SEARCH THE UNIT FOR
9 MARIJUANA, DIDN'T IT?

10 A. NO, I DON'T THINK IT ADDED. I THINK IT SUPPORTED IT.

11 Q. WELL, IT WAS ADDITIONAL INFORMATION, WASN'T IT?

12 A. IT WAS ADDITIONAL INFORMATION, YES, THAT SUPPORTED MY
13 INITIAL INVESTIGATION.

14 Q. AND YOU PLACED THAT OBSERVATION IN THE SEARCH WARRANT
15 AFFIDAVIT IN ORDER TO FURTHER SUPPORT YOUR APPLICATION FOR A
16 PROBABLE CAUSE SEARCH WARRANT IN THIS CASE OF UNIT D, DIDN'T
17 YOU?

18 MR. WOLFE: YOUR HONOR, I OBJECT TO THAT QUESTION
19 AS CALLING FOR A LEGAL CONCLUSION.

20 THE COURT: OVERRULED.

21 THE WITNESS: MY INITIAL OBSERVATIONS ARE IN THE
22 AFFIDAVIT. THAT ADDITIONAL OBSERVATION WAS ALSO PLACED IN
23 THERE BECAUSE THOSE OBSERVATIONS WERE MADE PRIOR TO
24 PREPARING THE SEARCH WARRANT.

25 ///

1 BY MR. WALSH:

2 Q. NOW, GOING BACK TO THE TIME WHEN YOU FIRST ENTERED THE
3 UNIT ON THAT FIRST OCCASION, IF YOU HAD ENTERED UNIT D AND
4 HAD SEEN NO MARIJUANA PLANTS GROWING AND NO MARIJUANA IN
5 UNIT D, WOULD YOU STILL HAVE APPLIED FOR A SEARCH WARRANT TO
6 SEARCH UNIT D?

7 A. YES.

8 Q. EVEN IF UNIT D WAS COMPLETELY VACANT AND YOU COULDN'T
9 SEE ANY?

10 A. WELL, THAT WOULD BE DIFFERENT. IT WOULD BE -- I WOULD
11 NOT.

12 HOWEVER, THERE WAS SEVERAL STRUCTURES CONTAINED
13 WITHIN UNIT D THAT WOULD STILL LEAD ME TO BELIEVE THAT --
14 LOOKING IN THE DOOR AND NOT SEEING ANYTHING, I WOULD STILL
15 BELIEVE THAT THERE WAS MARIJUANA BEING GROWN INSIDE ONE OF
16 THE ENCLOSED DOORS.

17 Q. OKAY. BUT STANDING OUTSIDE UNIT D BEFORE YOU ENTERED
18 THE UNIT, YOU DIDN'T KNOW THAT THERE WAS SEPARATE ROOMS
19 INSIDE UNIT D?

20 A. NO.

21 Q. AND FOR ALL INTENTS AND PURPOSES, JUST LOOKING AT THE
22 OUTSIDE OF UNIT D, IT COULD HAVE BEEN JUST A ONE-ROOM
23 WAREHOUSE. IS THAT RIGHT?

24 A. YES.

25 Q. SO THE FACT THAT YOU BECAME AWARE THAT THERE WAS THE

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1 THREE SEPARATE GROW ROOMS WAS SOMETHING THAT YOU LEARNED
2 AFTER YOU ENTERED THE UNIT?

3 A. YES.

4 Q. SO THEN RESTATING MY QUESTION EARLIER, THEN, IF YOU HAD
5 ENTERED UNIT D AND YOU SAW NO PLANTS AT ALL, YOU WOULD HAVE
6 NO REASON AT ALL TO APPLY FOR A SEARCH WARRANT, WOULD YOU?

7 MR. WOLFE: OBJECTION, YOUR HONOR. THE QUESTION
8 IS SPECULATIVE AND IRRELEVANT. THE QUESTION IS WHAT WOULD
9 HAVE HAPPENED IF THERE HAD BEEN NO ENTRY, NOT IF THE FACTS
10 HAD BEEN DIFFERENT.

11 THE COURT: SUSTAINED.

12 MR. WALSH: WELL, YOUR HONOR, I THINK IT GOES TO
13 THE ISSUE OF HIS DECISION, WHAT PROMPTED HIS DECISION TO GET
14 A SEARCH WARRANT. I'M TRYING TO LAY THE GROUNDWORK THAT, IF
15 HE HAD SEEN NOTHING IN THE WAREHOUSE, THEN HE WOULDN'T
16 HAVE --

17 THE COURT: I KNOW EXACTLY WHAT YOU'RE SAYING.
18 THE OBJECTION IS STILL SUSTAINED, SIR.
19 BY MR. WALSH:

20 Q. SO ACTUALLY SEEING THE MARIJUANA THAT WAS IN THE UNIT
21 UPON FIRST ENTERING THE UNIT BEHIND OFFICER GODOY, THAT WAS
22 SOMETHING THAT MOTIVATED YOU TO GET THE SEARCH WARRANT,
23 WASN'T IT?

24 A. NO.

25 Q. NOT AT ALL? YOU DIDN'T TAKE IT INTO CONSIDERATION AT

1 ALL?

2 A. WELL, AGAIN, IT WAS THERE. IT ONLY SUPPORTED MY
3 OPINION THAT THERE WAS MARIJUANA BEING GROWN IN THERE. THE
4 FACTORS THAT LED TO THAT POINT IN THE INVESTIGATION IS WHAT
5 I BELIEVED, THAT MARIJUANA WAS BEING GROWN IN THERE AND THAT
6 I WOULD HAVE OBTAINED A SEARCH WARRANT FOR.

7 Q. BUT OBSERVING THE MARIJUANA IN THERE WAS SIGNIFICANT
8 ENOUGH FOR YOU TO PUT IT IN THE SEARCH WARRANT AFFIDAVIT.
9 ISN'T THAT RIGHT?

10 A. AGAIN, AT THE TIME THAT I AUTHORED THE SEARCH WARRANT
11 AFFIDAVIT, THOSE ITEMS HAD ALREADY BEEN SEEN.

12 HAD THOSE ITEMS NOT HAVE BEEN SEEN, I STILL WOULD
13 HAVE AUTHORED A SEARCH WARRANT UP TO THE POINT PRIOR TO
14 ENTRY BASED ON THE INFORMATION THAT I HAD AND THE
15 OBSERVATIONS THAT I HAD UP TO THAT POINT.

16 Q. OKAY. NOW, YOU STATE IN YOUR SEARCH WARRANT AFFIDAVIT
17 THAT YOU FORMED THE OPINION THAT YOU BELIEVED MARIJUANA WAS
18 BEING CULTIVATED IN UNIT D AT A POINT IN TIME AFTER YOU HAD
19 MADE THE OBSERVATIONS OF THE BAMBOO SHOOTS AND THE GENERATOR
20 BEING TAKEN INTO THE UNIT.

21 IS THAT RIGHT?

22 A. IT WAS ACTUALLY PROPANE.

23 Q. EXCUSE ME. THE PROPANE TANK.

24 A. YES, IT WAS A FIVE-GALLON PROPANE TANK, THE BAMBOO
25 STALKS, THE PAINTED WINDOW, AND THE ODOR FROM MR. IGARIAN BY

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1 MYSELF, MR. GAMBARYAN BY DETECTIVE MCKINNEY, AND THE ODOR AT
2 THE DOOR BY DETECTIVE LEVIN AND OFFICER GODOY.

3 Q. ALL RIGHT. BUT THE DETECTING THE ODOR FROM THE DOOR
4 AND UPON MR. IGARIAN OCCURRED AFTER THE POLICE OFFICERS
5 ARRIVED TO ASSIST YOU.

6 IS THAT RIGHT?

7 A. THAT'S CORRECT.

8 Q. AND IN YOUR SEARCH WARRANT AFFIDAVIT YOU SAY YOU FORMED
9 YOUR OPINION THAT THERE WAS MARIJUANA INSIDE UNIT D BEFORE
10 YOU CALLED THE MEMBERS OF THE TEAM IN ORDER TO ASSIST YOU.

11 IS THAT RIGHT?

12 MR. WOLFE: YOUR HONOR, OBJECTION. THE QUESTION
13 MISSTATES THE AFFIDAVIT.

14 THE COURT: SUSTAINED.

15 WHY DON'T YOU REFER TO THE AFFIDAVIT AND ASK YOUR
16 QUESTION IN THAT WAY, IF THAT'S WHAT YOU WANT.

17 MR. WALSH: ALL RIGHT.

18 BY MR. WALSH:

19 Q. YOU HAVE THE AFFIDAVIT IN FRONT OF YOU. I THINK
20 IT'S -- I'M REFERRING TO PAGE 8 OF 11 OF THE AFFIDAVIT, THE
21 FIRST THREE LINES.

22 A. YES.

23 Q. ALL RIGHT. SO MY QUESTION IS THAT YOU -- YOU FORMED
24 YOUR OPINION THAT UNIT D CONTAINED MARIJUANA BEFORE YOU
25 CALLED FOR ASSISTANCE BY OTHER OFFICERS TO ARRIVE AT THE

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1 SCENE. IS THAT RIGHT?

2 A. YES. I HAD AN OPINION THAT MARIJUANA WAS BEING GROWN
3 IN THERE BASED ON THE INFORMATION THAT I HAD RECEIVED FROM
4 THE ANONYMOUS SOURCE OF INFORMATION AND THE OBSERVATIONS
5 THAT I MADE FROM THE ITEMS BEING REMOVED FROM THE CAR INTO
6 THE BUILDING.

7 BASED ON THAT INFORMATION AND THOSE OBSERVATIONS,
8 I CONTACTED ADDITIONAL MEMBERS OF MY SQUAD TO RESPOND TO
9 ASSIST WITH ADDITIONAL INVESTIGATION OF THE LOCATION.

10 Q. OKAY. NOW, MY QUESTION TO YOU, THEN, IS AT THAT POINT
11 IN TIME, SINCE YOU HAD FORMED THE OPINION THAT THERE WAS
12 MARIJUANA IN UNIT D, AT THE TIME THAT YOU WERE CALLING FOR
13 ADDITIONAL OFFICERS TO ASSIST YOU, WHY DIDN'T YOU APPLY FOR
14 A SEARCH WARRANT AT THAT POINT IN TIME?

15 MR. WOLFE: OBJECTION, YOUR HONOR. THE QUESTION
16 IS NOT RELEVANT TO THE ANALYSIS.

17 THE COURT: OVERRULED.

18 THE WITNESS: I WANTED TO DO SOME ADDITIONAL
19 SURVEILLANCE OF THE LOCATION FOR ADDITIONAL ITEMS TO
20 CORROBORATE THE INFORMATION PROVIDED ME BY THE SOURCE OF
21 INFORMATION AND ALSO TO SUPPORT THE ITEMS THAT I OBSERVED
22 ENTER THE LOCATION WERE, IN FACT, FOR GROWING MARIJUANA.
23 BY MR. WALSH:

24 Q. BUT THOSE OBSERVATIONS -- THAT CONTINUING INVESTIGATION
25 COULD HAVE BEEN DONE WHILE OTHER OFFICERS WERE SEEKING A

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1 SEARCH WARRANT, THOUGH. COULDN'T THAT HAVE BEEN DONE?

2 A. I'M SORRY? I DON'T UNDERSTAND THE QUESTION.

3 Q. IN OTHER WORDS, AT THE TIME THAT YOU CALLED THE

4 FOOTHILL NARCOTICS ENFORCEMENT DETAIL FOR ADDITIONAL

5 OFFICERS TO COME OUT TO THE SCENE, YOU COULD HAVE ALSO

6 APPLIED FOR A SEARCH WARRANT AND HAVE OTHER OFFICERS REMAIN

7 AND CONTINUE THE INVESTIGATION WHILE THE SEARCH WARRANT

8 APPLICATION WAS PENDING, AT THAT POINT IN TIME.

9 A. WELL, AT THAT POINT IN TIME, I WAS THE INVESTIGATING

10 OFFICER. SO I WOULD HAVE BEEN THE ONE THAT WOULD HAVE

11 AUTHORED THE SEARCH WARRANT, AND THOSE PERSONS WOULD HAVE TO

12 COME TO TAKE OVER THE SURVEILLANCE.

13 HOWEVER, I DID WANT AN ODOR OF MARIJUANA COMING

14 FROM THE LOCATION IN ORDER TO -- OR IN ORDER TO GO BACK AND

15 WRITE THE SEARCH WARRANT SO THAT WAY I HAD ONE MORE THING TO

16 SUPPORT MY OPINION AS OPPOSED TO JUST INFORMATION AND SEEING

17 TWO THINGS GO INTO A LOCATION.

18 MR. WALSH: MAY I HAVE A MOMENT, YOUR HONOR?

19 THE COURT: OF COURSE.

20 (*DEFENSE COUNSEL CONFERS WITH DEFENDANT SOTTO VOCE.*)

21 MR. WALSH: I HAVE TWO BRIEF AREAS THAT I WOULD

22 LIKE TO COVER.

23 THE COURT: OKAY.

24 BY MR. WALSH:

25 Q. PRIOR TO THE DATE WHEN YOU WERE OUT THERE DOING YOUR

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1 SURVEILLANCE, HAD YOU BEEN OUT TO THAT LOCATION BEFORE?

2 A. I BELIEVE I RECEIVED THAT INFORMATION THAT MORNING
3 AND RESPONDED THERE SHORTLY AFTER.

4 Q. WHAT ABOUT WITHIN THE TWO WEEKS LEADING UP TO THE DATE
5 THAT YOU RESPONDED TO THE LOCATION, HAD YOU BEEN OUT TO THE
6 VICINITY OF UNIT D CONDUCTING AN INVESTIGATION?

7 A. I BELIEVE THAT WAS THE FIRST TIME THAT I HAD BEEN OUT
8 THERE.

9 Q. THEN REFERRING TO YOUR DECLARATION, DO YOU HAVE THAT IN
10 FRONT OF YOU?

11 A. I DO.

12 Q. STARTING AT LINE 14.

13 A. PAGE 1?

14 Q. PAGE 16, I THINK, PARAGRAPH 5.

15 A. LINE 14?

16 Q. YEAH.

17 A. OKAY.

18 Q. CAN I READ TO YOU AND THEN ASK YOU A QUESTION. IT
19 STATES (AS READ:)

20 "I WOULD HAVE SOUGHT A SEARCH WARRANT FOR UNIT D IN
21 VIEW OF THE PROBABLE CAUSE TO BELIEVE THAT EVIDENCE OF
22 AN INDOOR MARIJUANA GROW WAS IN THE UNIT, PARTICULARLY
23 SINCE THE BLACK BAG OF MARIJUANA PLANTS HAD JUST BEEN
24 TAKEN OUT OF UNIT D."

25 NOW, MY QUESTION IS AT THE TIME THAT YOU ENTERED,

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1 THAT FIRST ENTRY OF UNIT D, YOU HADN'T OPENED THE BLACK BAG
2 YET, HAD YOU?

3 A. THAT'S CORRECT.

4 Q. SO YOU HAD MERELY SEEN THE BLACK BAG BEING PUT IN
5 MR. IGARIAN'S CAR?

6 A. THAT'S CORRECT, YES.

7 Q. AND THEN YOU QUESTIONED MR. IGARIAN?

8 A. YES.

9 Q. AND THEN YOU HAD HANDCUFFED MR. IGARIAN?

10 A. AT SOME POINT, HE WAS HANDCUFFED. I DON'T BELIEVE I
11 APPROACHED HIM, ASKED HIM A COUPLE OF QUESTIONS, AND
12 HANDCUFFED HIM.

13 Q. AND THEN AFTER THE CONVERSATION WITH MR. IGARIAN, THE
14 NEXT THING THAT OCCURRED IS YOU ENTERED UNIT D --

15 A. YES.

16 Q. -- AND SAW THE MARIJUANA PLANTS?

17 A. YES.

18 Q. AND THEN YOU CAME OUT AND THEN, AT SOME POINT IN TIME,
19 YOU SEARCHED MR. IGARIAN'S CAR AND OPENED UP THE BLACK BAG?

20 A. YES.

21 Q. AND HOW MUCH LATER WAS THAT AFTER YOU HAD COME OUT OF
22 UNIT D?

23 A. I'M SURE IT WAS RIGHT AFTER OR JUST BEFORE. I'M NOT
24 TOO SURE, BUT I KNOW IT WAS AROUND THE SAME TIMEFRAME.

25 Q. SO BASICALLY, TO A CERTAIN EXTENT, OBSERVING MARIJUANA

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1 PLANTS GROWING INSIDE UNIT D AT LEAST PROMPTED YOUR GOING
2 BACK TO MR. IGARIAN'S CAR AND OPENING UP THE BLACK BAG
3 SUSPECTING THAT THAT HAD MARIJUANA IN IT?

4 MR. WOLFE: YOUR HONOR, THAT QUESTION MISSTATES
5 THE TESTIMONY JUST GIVEN ABOUT WHEN IT TOOK PLACE.

6 THE COURT: I THINK YOU BETTER CLARIFY THAT.
7 BY MR. WALSH:

8 Q. OKAY. YOUR SEARCH OF THE BLACK BAG OCCURRED AFTER YOU
9 SAW MARIJUANA INSIDE UNIT D FOR THE FIRST TIME. RIGHT?

10 A. I'M SORRY?

11 Q. YOUR SEARCH OF THE BLACK BAG, WHEN DID THAT HAPPEN IN
12 CONNECTION WITH THE TIME THAT YOU ENTERED UNIT D FOR THE
13 FIRST TIME?

14 A. I DON'T RECALL EXACTLY. I WOULD ASSUME THAT IT WAS
15 AFTER I ENTERED D, BUT AGAIN, I'M NOT SURE WHEN EXACTLY THAT
16 BLACK BAG WAS OPENED. I KNOW IT WAS DONE THE SAME TIME,
17 THOUGH.

18 Q. BUT YOU DIDN'T SEE THE CONTENTS OF THE BLACK BAG AT THE
19 TIME THAT YOU WERE QUESTIONING MR. IGARIAN, DID YOU?

20 A. NO, I DID NOT.

21 Q. AND YOU DIDN'T SEE THE CONTENTS OF THE BLACK BAG PRIOR
22 TO YOU WALKING INTO UNIT D FOR THE FIRST TIME, DID YOU?

23 A. I DON'T BELIEVE SO.

24 AGAIN, I'M NOT SURE ON THE WHOLE TIMELINE OR THE
25 TIME OF EVENTS. BUT IT WOULD BE SAFE TO SAY THAT NO, I

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1 DIDN'T SEE THE CONTENTS PRIOR TO ENTERING. HOWEVER, I'M NOT
2 SURE IF I OPENED THAT BLACK BAG BEFORE I WENT IN. I JUST
3 DON'T RECALL.

4 Q. WELL, ACCORDING TO THE CHRONOLOGY OF THE FACTS THAT YOU
5 SET OUT IN THE SEARCH WARRANT AFFIDAVIT, YOU DON'T REPORT
6 OPENING UP THE CONTENTS OF THE BLACK BAG PRIOR TO ENTERING
7 UNIT D, DO YOU?

8 A. I DON'T BELIEVE SO.

9 MR. WALSH: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: ANY OTHER COUNSEL CARE TO EXAMINE?

11 MR. REED? ANYBODY ON THE DEFENSE SIDE. DOESN'T
12 MATTER.

13 MR. REED: NO, YOUR HONOR.

14 MR. BROOKLIER: NO, YOUR HONOR. THANK YOU.

15 THE COURT: MR. WOLFE, ANY REDIRECT?

16 MR. WOLFE: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 DETECTIVE COYLE, THANK YOU VERY MUCH. YOU MAY
19 STEP DOWN.

20 MR. WOLFE: YOUR HONOR, MAY I ASK IF
21 DETECTIVE COYLE MAY BE EXCUSED NOW?

22 THE COURT: OKAY. ANY PROBLEM WITH HIS BEING
23 EXCUSED?

24 MR. REED: NO OBJECTION.

25 MR. BROOKLIER: NO OBJECTION.

1 THE COURT: ALL RIGHT.

2 YES, YOU MAY BE EXCUSED.

3 OKAY. WE HAVE NOW CONDUCTED OUR EVIDENTIARY
4 HEARING ON THIS ISSUE. IF THERE'S ANY ARGUMENT, BRIEF
5 ARGUMENT, THAT YOU WISH TO MAKE ON THIS ISSUE, MR. WALSH,
6 I'LL BE HAPPY TO ENTERTAIN IT.

7 **ARGUMENT ON BEHALF OF DEFENSE**

8 MR. WALSH: RIGHT. YES, YOUR HONOR.

9 I GUESS BEFORE WE GET INTO THE MAIN ISSUE OF THE
10 HEARING, SOMETHING DID COME UP IN THE HEARING, AND THAT IS
11 THAT THE OBSERVATIONS OF THE CONTENTS OF THE BLACK BAG
12 OCCURRED AFTER THE INITIAL ILLEGAL ENTRY.

13 SO OUR POSITION WOULD BE THE COURT COULDN'T TAKE
14 THAT INTO CONSIDERATION IN EVALUATING PROBABLE CAUSE BECAUSE
15 IT'S NOT PRE-EXISTING PROBABLE CAUSE, BUT THAT'S A SIDE
16 ISSUE.

17 THE COURT: I THINK EVEN BEFORE HE TOOK THE STAND,
18 I BELIEVE DURING MY CONVERSATION WITH MR. REED, THAT I HAD
19 ALREADY INDICATED THAT IT WAS MY INTENTION TO NOT CONSIDER
20 THAT AS PART OF THE PROBABLE CAUSE BECAUSE MY SENSE OF IT
21 WAS THAT HE DIDN'T HAVE THAT BEFORE, BEFORE HE WENT IN TO
22 THE UNIT. AND I THINK IT'S FAIRLY SAID, IT'S BEEN
23 CONFIRMED.

24 SO NO, I DO NOT TAKE THE CONTENT OF THE BLACK BAG
25 INTO CONSIDERATION IN THE OVERALL DETERMINATION OF WHETHER

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1 OR NOT THERE'S PROBABLE CAUSE.

2 IF YOU WANT TO BE HEARD ON WHETHER OR NOT -- WELL,
3 ON THIS FACTUAL ISSUE THAT WE JUST HAD A HEARING ON, I'LL
4 HEAR FROM YOU.

5 MR. WALSH: YES. I WANT TO MOVE ON TO THAT ISSUE,
6 AND THAT ARISES OUT OF PAGE 33 OF OUR MOVING PAPERS THAT I
7 POINTED TO THE COURT'S ATTENTION EARLY THIS MORNING WHERE
8 OUR CONTENTION WAS THAT, IF THE DECISION TO SEEK A WARRANT
9 WAS PROMPTED BY WHAT THE OFFICER SAW DURING THE ILLEGAL
10 SEARCH, THEN THE INDEPENDENT SOURCE DOCTRINE DOES NOT APPLY.

11 AND THAT'S TAKEN FROM LANGUAGE IN MURRAY VERSUS
12 UNITED STATES. AND ON PAGE 542 OF THE MURRAY DECISION, THE
13 COURT STATES THAT (AS READ:)

14 "THE ULTIMATE QUESTION THEREFORE IS WHETHER THE SEARCH
15 PURSUANT TO THE WARRANT WAS, IN FACT, A GENUINELY
16 INDEPENDENT SOURCE OF THE INFORMATION AND TANGIBLE
17 EVIDENCE AT ISSUE HERE."

18 THIS WOULD NOT HAVE BEEN THE CASE IF THE AGENT'S
19 DECISION TO SEEK THE WARRANT WAS PROMPTED BY WHAT HE HAD
20 SEEN DURING THE INITIAL ENTRY.

21 SO WHEN I ASKED THE OFFICER WHETHER HE WOULD HAVE
22 CONDUCTED A SEARCH IF THE WAREHOUSE WAS EMPTY, HE WAS
23 EVASIVE. HE SAID, WELL, THERE WERE MULTIPLE ROOMS, AND HE
24 DIDN'T SEE ALL THE ROOMS.

25 BUT THE FACT OF THE MATTER IS HE DIDN'T SEE ANY

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1 ROOMS UNTIL HE ENTERED THE RESIDENCE OR UNTIL HE ENTERED
2 UNIT D; AND THEREFORE, HIS OBSERVATIONS OF SEEING MARIJUANA
3 PLANTS GROWING THERE WAS PLACED IN THE SEARCH WARRANT
4 AFFIDAVIT.

5 IT'S CLEARLY THE MOST SIGNIFICANT PART OF THE
6 SEARCH WARRANT AFFIDAVIT BECAUSE, UP UNTIL THAT POINT IN
7 TIME, THE OFFICERS WERE BASING THEIR PROBABLE CAUSE ON
8 REASONABLE SUSPICION. BUT ONCE THEY HAD ENTERED THE UNIT
9 AND SEEN MARIJUANA GROWING, PLACING THAT IN THE SEARCH
10 WARRANT AFFIDAVIT MADE IT A HUNDRED PERCENT CERTAIN THAT
11 THIS SEARCH WARRANT WOULD BE ISSUED BECAUSE IT WAS A HUNDRED
12 PERCENT CERTAINTY THAT THERE WAS MARIJUANA GROWING IN THE
13 STORAGE UNIT.

14 SO I THINK ANY REASONABLE ANSWER TO THAT
15 QUESTION -- THAT IS, IF HE HAD GONE INTO THE UNIT AND IT WAS
16 AN EMPTY WAREHOUSE AND THERE WAS NO MARIJUANA THERE, HE
17 WOULD NOT HAVE APPLIED FOR A SEARCH WARRANT -- NO REASONABLE
18 PERSON WOULD HAVE BECAUSE IT WOULD HAVE BEEN A WASTE OF TIME
19 IN ORDER TO APPLY FOR A SEARCH WARRANT FOR AN EMPTY
20 WAREHOUSE.

21 AND SO, IN THIS CASE, BEFORE ENTERING, THEY HAD
22 REASONABLE SUSPICION, THEY HAD SMELLED THE ODOR OF
23 MARIJUANA, THEY HAD SEEN ITEMS CONSISTENT WITH GROWING
24 MARIJUANA BEING BROUGHT IN.

25 THEIR CURIOSITY WAS UP, BUT THEY HADN'T REACHED

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1 THE POINT WHERE THEY ACTUALLY APPLIED FOR A SEARCH WARRANT.
2 AND THEN THEY ENTERED THE UNIT, THEY SAW THE MARIJUANA
3 GROWING, AND THEN THEY CAME OUT, AND THEN THEY APPLIED FOR
4 THE WARRANT.

5 SO I THINK ON THIS RECORD, IT'S REASONABLE FOR THE
6 COURT TO MAKE THE FINDING THAT THE WARRANT WAS PROMPTED BY
7 WHAT THE OFFICER SAW DURING THE ILLEGAL SEARCH.

8 THE COURT: BY THAT LOGIC, WOULD THERE EVER, EVER
9 BE A CASE WHERE AN OFFICER CAN ESTABLISH THAT HE OR SHE
10 WOULD HAVE APPLIED FOR A WARRANT EVEN PREVIOUS TO ANY KIND
11 OF AN ENTRY THAT MAY BE LATER DEEMED UNLAWFUL?

12 MR. WALSH: WELL, IN SEGURA THEY SAY IT'S VERY
13 HARD FOR AN OFFICER TO OVERCOME THAT PROBLEM. I MEAN,
14 THEY'VE HIGHLIGHTED THAT AS A PROBLEM IN THE --

15 THE COURT: WELL, IT MAY BE A PROBLEM --

16 MR. WALSH: -- IN THE MURRAY CASE.

17 THE COURT: IT MAY BE A PROBLEM, BUT IT'S A MATTER
18 OF FACT. IT'S A FACTUAL DETERMINATION. BUT BY YOUR
19 ARGUMENT, THEN WE DON'T EVEN NEED A FACTUAL DETERMINATION;
20 IT WOULD BE AN IRREBUTTABLE PRESUMPTION AND CONCLUSION.

21 SO I DON'T THINK THAT'S RIGHT. BECAUSE EVERY
22 TIME, NECESSARILY, THOSE WOULD BE THE FACTS AND IF THAT'S
23 THE CASE AND THAT'S GOING TO MAKE IT IMPOSSIBLE FOR THE
24 DETECTIVE OR THE OFFICER TO ESTABLISH, AS A MATTER OF FACT,
25 HE WOULD HAVE APPLIED FOR IT REGARDLESS, THEN WHY WOULD THE

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1 SUPREME COURT EVEN HAVE WASTED EVERYBODY'S TIME BY SAYING
2 THAT'S A POSSIBILITY?

3 MR. WALSH: WELL, JUST FROM A FACTUAL MATTER,
4 YOUR HONOR, WE'RE URGING THE COURT TO MAKE A FINDING THAT
5 HIS DECISION TO SEEK THE SEARCH WARRANT WAS PROMPTED BY WHAT
6 HE SAW. AND IF THE COURT MAKES THAT FINDING, THEN THE
7 INDEPENDENT SEARCH DOCTRINE DOESN'T APPLY AND THE COURT
8 SHOULD SUPPRESS THE EVIDENCE.

9 THE COURT: ALL RIGHT. I UNDERSTAND. THANK YOU.

10 **ARGUMENT ON BEHALF OF PLAINTIFF**

11 THE COURT: MR. WOLFE.

12 DO YOU WANT TO COMMENT ALSO ON WHAT HE SAID ABOUT,
13 YOU KNOW, IF HE HAD FOUND THE PLACE EMPTY, HE WOULDN'T HAVE
14 SEARCHED?

15 DO YOU THINK THAT HAS ANY LOGICAL CONNECTION TO
16 THE INQUIRY THAT WE ARE SUPPOSED TO MAKE?

17 MR. WOLFE: NO, YOUR HONOR, I DON'T.

18 I UNDERSTAND THE INQUIRY TO BE IF THE FACTS WERE
19 AS THEY WERE KNOWN TO BE AT THE MOMENT IMMEDIATELY PRIOR TO
20 THE ENTRY, WITHOUT REGARD TO THE EVENTS OF THE ENTRY, WOULD
21 A WARRANT HAVE BEEN SOUGHT, NOT IF THERE HAD BEEN AN ENTRY
22 AND A COUNTER-FACTUAL STATE OF AFFAIRS WAS FOUND.

23 IT MAKES NO SENSE TO SAY "IF I'D GONE IN AND SEEN
24 NOTHING," BUT THAT'S NOT WHAT HAPPENED.

25 THE QUESTION IS IF HE HAD GONE UP AND THE DOOR HAD

1 BEEN LOCKED, NO ONE ANSWERED, IT COULD NOT BE FORCED, NO
2 ENTRY TOOK PLACE, WHAT WOULD HAPPEN. I BELIEVE THAT'S THE
3 ANALYSIS.

4 AND I BELIEVE THAT THE MOST INTERESTING TESTIMONY
5 ABOUT THAT IS THAT THE DETECTIVE SAID IN RESPONSE TO THE
6 QUESTION "YOU FORMED AN OPINION BEFORE YOU TALKED TO IGARIAN
7 THAT MARIJUANA WAS BEING GROWN IN THERE. WHY DIDN'T YOU
8 APPLY FOR THE WARRANT THEN?"

9 AND HE SAID, "I WANTED TO DO MORE INVESTIGATION TO
10 CORROBORATE THE INFORMATION FROM THE TIPSTER. I DID WANT AN
11 ODOR OF MARIJUANA FROM THE LOCATION TO SUPPORT MY
12 OBSERVATIONS."

13 HE WANTED TO DO A LITTLE MORE INVESTIGATION. HE
14 WALKED UP. HE MADE THE INVESTIGATION. YOUR HONOR'S
15 DESCRIBED ALREADY WHAT HE FOUND.

16 MR. IGARIAN, INCREDIBLY DENYING THAT HE KNEW WHAT
17 WAS IN THE BAG. THAT FACT WAS CERTAINLY KNOWN. HE DID NOT
18 YET KNOW WHAT WAS IN THE BAG, BUT HE KNEW THAT IGARIAN
19 INCREDIBLY DENIED KNOWLEDGE OF WHAT WAS IN THE BAG AND HE
20 INCREDIBLY DENIED KNOWLEDGE OF WHAT WAS IN THE BUILDING. I
21 BELIEVE THERE'S PROBABLE CAUSE THERE.

22 UNLESS YOUR HONOR HAS ANOTHER QUESTION, I'LL
23 SUBMIT.

24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

25 ALL RIGHT. COUNSEL, THANK YOU VERY MUCH FOR YOUR

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1 ARGUMENT AND FOR THE HEARING. I APPRECIATE IT.

2 I WILL TAKE THIS MATTER UNDER SUBMISSION, AND I
3 WILL ISSUE A WRITTEN RULING IN DUE COURSE. ALL RIGHT.

4 HAVE A PLEASANT AFTERNOON. THANK YOU.

5 MR. REED: YOUR HONOR, PROCEDURALLY, WHERE IS THE
6 CASE? DO YOU WANT TO SET IT FOR STATUS?

7 THE COURT: NO. I WILL ISSUE MY RULING, AND IN
8 THAT RULING, I WILL ISSUE AN ORDER FOR FURTHER STATUS
9 CONFERENCE. AND THEN WE'LL COME IN AND WE'LL TALK ABOUT,
10 DEPENDING ON WHAT THE RULING IS, WHERE WE GO FORWARD ON
11 THAT.

12 MR. REED: VERY GOOD.

13 THE COURT: OKAY. THANK YOU.

14 MR. STANLEY: COUNSEL FOR MR. IGARIAN COULD NOT BE
15 PRESENT THIS AFTERNOON. SHE HAD TO BE IN ANOTHER COURTROOM.
16 SHE TEXTED ME A COUPLE OF DATES WHERE SHE WOULD BE
17 UNAVAILABLE.

18 MY GUT FEELING IS THAT, RIGHT NOW, THOSE DATES ARE
19 IRRELEVANT.

20 THE COURT: THEY ARE, AND MR. IGARIAN WAS NOT A
21 MOVING PARTY HERE. SO THE FACT THAT SHE'S NOT HERE THIS
22 AFTERNOON, I THINK THAT'S FINE.

23 BUT I THINK YOU'RE RIGHT THAT THE DATES ARE PRETTY
24 MUCH IRRELEVANT BECAUSE I DO EXPECT TO ISSUE MY RULING
25 SOONER RATHER THAN LATER. OBVIOUSLY, I DON'T WANT TO

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1 UNNECESSARILY DELAY, BUT THIS IS SOMETHING I WOULD LIKE TO
2 THINK ABOUT IN LIGHT OF THE ARGUMENTS, AND I WANT TO SORT OF
3 APPRECIATE THE SIGNIFICANCE OF THE ARGUMENTS, AND THEN I
4 WILL ISSUE MY RULING.

5 BUT WE'LL TALK ABOUT DATES WHEN YOU FOLKS COME
6 BACK ON A CERTAIN DATE, AND I'LL HAVE MY CLERK CALL AROUND
7 TO MAKE SURE THAT THAT DATE IS OKAY. IF THERE'S A PROBLEM,
8 WE'LL JUST DO WHAT WE CAN TO ACCOMMODATE.

9 MR. STANLEY: SHE'S JUST NOT AVAILABLE FROM NOW
10 THROUGH JANUARY 7.

11 THE COURT: OKAY.

12 MR. STANLEY: THANK YOU.

13 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
14 COUNSEL.

15 THE CLERK: THIS COURT NOW STANDS IN RECESS.

16 (PROCEEDINGS CONCLUDED.)

17 --OOO--
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CERTIFICATE

I HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 28TH DAY OF FEBRUARY, 2011.

/S/ MARY RIORDAN RICKEY
MARY RIORDAN RICKEY
OFFICIAL COURT REPORTER

DECEMBER 15, 2010